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CRIME AND INSANITY

By CHARLES MERCIER, M.D., F.R.C.P., F.R.C.S.

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CHARLES MERCIER

M.D., F.R.C.P., F.R.C.S.

PHYSICIAN FOR MENTAL DISEASES TO CHARING CROSS HOSPITAL, VISITOR TO THE STATE INEBRIATE REFORMATORY.

AUTHOR OF "SANITY AND INSANITY," "PSYCHOLOGY: NORMAL AND MORBID," "CRIMINAL RESPONSIBILITY," "A TEXT-BOOK OF INSANITY," ETC., ETC.

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PREFACE

TIME and labour spent in systematizing knowledge are never thrown away. In this little book I have endeavoured to show in what Crime consists, what the nature of Crime is, and why certain acts, some of which need harm nobody, are regarded as Crimes. Crime is here viewed and explained from a biological standpoint, as militating, in one way or another, against the welfare of society, present or future. Considerable space has been devoted to the classification of Crimes, for it is only by classifying them, and bringing out their several relations to one another, that their true nature is brought into view. In addition, I have set forth my views as to the nature of Insanity, views that are not yet generally accepted, but that are, I think, growing in favour. Even if they are wrong, it will do no harm to present the matter in

a new aspect, and thus to stimulate thought. The extent to which Insanity contributes to each kind of crime, and the manner in which it does so, are explained, and certain suggestions are made as to the directions in which the criminal law is in need of alteration. The methods that we employ for preventing and punishing crime must depend, in the long run, on the view that we take of its nature, and therefore it is important that our notions on the subject should be carefully thought out. The whole book may be regarded as a supplement to my book on Conduct and its Disorders, since Crime is, in the aspect of it that is taken here, a disorder of conduct.

CRIME AND INSANITY

CHAPTER I

INSANITY AND CRIME

EVERY one knows that there is a certain relation or connection between insanity and crime: few have any clear notion what the relation or connection precisely is. It is common knowledge that crime is often committed by insane persons; and it is widely known that many persons convicted of crime are found, after conviction, to be feeble or disordered in mind; though this feebleness or disorder was not suspected, or was not taken into account, when they were charged and convicted of crime. There are some who regard crime as, *ipso facto*, evidence, or even proof, of insanity in the criminal; and others, without going to this extreme, yet regard some crimes, murder for instance, as conclusive proof that the criminal was insane

at the time of the crime. It is generally admitted that insanity on the part of a criminal ought to exempt him from some or all of the punishment that would be awarded to a sane person who had committed a similar crime; and it is widely held that no insane person should ever be punished, whatever he may do. Some have the notion that every insane person goes about like a roaring lion, seeking whom he may slay; and most believe in the existence of a "homicidal mania," which converts its victim into a bloodthirsty ruffian, ever intent on taking human life. In order that we may arrive at a correct judgment of the relation of insanity to crime, it is necessary that we should be quite clear as to what crime is, and what insanity is; and in order to make these discoveries we must dip deep into the constitution of human nature and human society, and must even extend our researches into the means of preservation of life in general.

The Struggle for Life is now become a household word. It is generally understood that every individual, and not only every individual animal and plant, but every race of animals and plants, maintains itself against

the competition of the rest of the organic world, and against the incidence of destructive inorganic forces, by a ceaseless struggle for survival; and for the successful pursuit of this struggle, very many devices are employed by different animals. Some owe their safety to their speed and agility in escaping pursuit; some to the strength and formidable weapons which enable them to repel; some to defensive armour which renders them invulnerable to their foes; some are protected by an appalling stench, which repels attack; others by the acrid taste of their skin or their bodies, which renders attack distasteful; many depend on concealment, many on the inaccessibility of their haunts, many on parasitism on some larger and more efficient host. Some forms of life survive by reason of their enormous and astounding fertility, which speedily supplies whatever inroads are made in their numbers; others, by reason of their high intelligence, which enables them to evade or overcome adversaries far superior in speed and strength. The tricks, devices, and stratagems that are pressed into the service of survival are endless and innumerable; but, of all methods that have been tried, none is

more successful, none is followed by so large a number of different races, or in so many diverse forms of animal life, as that of living together in communities. By this additional safeguard, the elephant and the bison supplement their size and strength; the antelope and the zebra their swiftness; the bee and the wasp their poisoned stings and their instinctive skill; the ant her minuteness; the wolf his speed and wind and courage. By the mutual help of life in common, many animals are able to survive, in spite of a conspicuous lack of any of these useful qualities. Mankind, in particular, has neither weapons of offence nor weapons of defence; neither the swiftness, the strength, nor the agility of other animals of his size; neither mimetic concealment, nor inaccessibility in his haunts; and yet he has achieved the mastery over every other organized being on the face of the earth, with the exception of certain microscopic animals and plants that are parasitic upon him; and even some of these he can render innocuous. This superior valency over every other form of life, man owes mainly to his social habit. It is the habit of living in associated numbers, in

organized societies, that renders him powerful, and enables him to give effect to the advantage of his superior intelligence. Supposing it possible for man to revert to the solitary habit, he would soon revert to the status of the gorilla. Every conquest of man over other animals, and over natural conditions, has been due to specialization of employment; and specialization is not possible except in social life. When life is lived in solitude, or in pairs, everything that is necessary for preservation and survival, must be done by each individual or each pair; and excellence is unattainable, for want of devotion to any one thing. In an organized society, functions are divided; and by the devotion of some members to one mode of action exclusively, that mode of action is better performed. When some collect food and others fight, both the collection of food and the fighting will be more efficient, than if all had to divide their time between collecting food and fighting. And there are innumerable modes of action that could never be performed at all, if leisure for some were not provided by the exertions of others. If every man had to collect his own food, protect his own family,

build his own house, make his own clothes, collect his own fuel, and make his own furniture and utensils, he would come badly off; and innumerable works of utility would remain undone. There would be no roads, bridges, houses, ships, vehicles, fortresses, wells, mills or forges; no art, no science, no commerce; no literature, no law, no medicine; nothing that makes the life we live worth living. But for his social habit, man would never have risen to the status of man. He would not even have reached the Stone Age. He would have remained an anthropoid simian, and would never have needed to concern himself about the relation of crime to insanity, for crime could not have existed, and insanity would not have been recognized.

Crime cannot be committed by a solitary; for the mark and characteristic of crime is that it is detrimental to society. Hence, in the absence of a society, there can be no crime. Abandon a man to himself in a desert; maroon him on an uninhabited island; and, whatever other disadvantages he is subjected to, he is freed from the possibility of committing crime. He cannot steal, or defraud, or murder, or maim; he cannot commit riot,

or rape, or treason, or burglary; he cannot beg, or rob, or wreck a train, or pick a pocket. As far as crime is concerned, he is condemned to a blameless life.

The main aim in life of every animal, the only aim that counts in the scheme of nature, is the continuation of the race to which it belongs; and to this end, every animal has acquired certain instinctive desires, which prompt it to those modes of action that contribute to this end—desires for courtship, exclusive possession, sexual union, parenthood, and so forth; all depending on, and contributing to, the preservation of the race. But no animal begins its career in full capability of reproducing its kind. A certain time must elapse, during which it is growing to maturity and reaching the reproductive stage. It is essential to the assumption of this stage, that the life of the individual should be preserved until the stage is reached. It is essential to the performance of the reproductive function, that the individual should live until this function is performed. Consequently, a number of other instinctive desires have been acquired, which safeguard the individual, and contribute to the pre-

servation of his life. He has appetites to eat and drink; he desires to preserve his bodily integrity, to escape death, maiming, mutilation, and injury; and these innate desires constitute a set of instincts of a separate class.

Although the reproductive instincts and the self-preservative instincts each contribute to the end sought by the other; although the self-preservative instincts owe their origin and existence to the need for propagating the race; and although reproduction could not be effected unless the life of the individual were prolonged to the reproductive age; yet between the two modes of action, and between the two sets of instincts, and their results, there is a certain antagonism, so that each demands, for its fulfilment, a certain sacrifice of the other. In many primitive animals, and in many that are considerably advanced in the evolutionary scale, reproduction requires the sacrifice of the life of the parent. In many insects, for instance, the deposition of the eggs is either itself fatal, or is speedily followed by the death of the mother. Certain male spiders, as soon as their proper function is performed, are incontinently devoured by

the female they have fertilized. Even in mankind, not only is the act of parturition exhausting; not only does it render the mother vulnerable in different ways to diseases to which she would be otherwise immune; but the duties of parenthood constitute for years a drain upon the resources of both parents, which diminishes their life-worthiness, exacts from them part of the nutriment that might otherwise go to the increase and prolongation of their lives, and so is antagonistic to self-preservation. In many cases, the preservation of the life of the offspring is attained by the sacrifice of the parent's life. In all cases it involves a sacrifice of part of the means of living, on the part of the parent.

In social animals, a third set of actions, and of instinctive desires, prompting to the actions, is added to the two sets just reviewed, and is antagonistic to both. There arises a new means of securing the preservation and propagation of the stock; a third mode of action contributing to the common end, but contributing by means that are in conflict with, as well as corroborative of, the other two, is provided. In common with other social animals, man has certain instinctive desires, which prompt

him to action directly preservative, not of his own life, or of that of the race, but of the community to which he belongs. His social instincts impel him to action conducive to the welfare of his community, and especially to abstain from action detrimental to it. From the present point of view, the latter instincts are of far more importance than the former. Social existence depends on certain abstentions. Society holds together by virtue of the inhibition, or control, or self-denial, that its members impose upon themselves, with respect to acts that are prompted by their self-preservative and reproductive instincts. The man who is marooned on a desert island, and is destitute of social environment, may rightfully appropriate to his use anything that he finds thereon. He may go where he pleases; he may impress into his service whatever animals he is able to subdue. Myrrh from the forest or gold from the mountain, pearls from the ocean or gems from the mine, are all his for the mere labour of gathering. But the same man, as a member of a society, finds his activity limited in every direction by the very fact of his membership. He may not go where he pleases, if, by so doing, he trespasses on the

privacy of others. He may not take what he chooses, if, by so doing, he invades the proprietary rights of his fellows. He may not interfere with his neighbour's manservant, nor with his maidservant, nor his ox, nor his ass, nor with anything that is his. He may take nothing to his own use that is not freely given to him, either as a gift, or in return for goods, or money, or service, rendered. And the reason is, that if every man in a society pursues without restraint his own self-regarding desires, the society falls to pieces, and, as a society, ceases to exist. Even in the mere matter of physical propinquity, if each does as seems right in his own eyes, the community is dispersed. If each individual of a flock, or a herd, or a shoal, goes off in any direction, or at any speed, different from that of the others, the flock, or the herd, or the shoal, is dispersed, and no longer exists; and if the safety or welfare of the individuals depend on the preservation of the integrity of the community, with the integrity of the community is sacrificed their welfare or their safety. And as the preservation and continuation of the race, the *ultima ratio* of the existence of every individual, depends on the preservation of the individual,

the dissipation of the community means the extirpation of the race, as far as that section of it that is embodied in that community is concerned.

Social conduct means, therefore, primarily, and before everything else, self-restraint—the limitation of the self-regarding activities whenever they are inconsistent with the good of the community. It means more than this, however. Not only must each individual in a community limit his activity, so that it does not interfere with, or limit to a greater extent, the corresponding liberty of others; but he must be prepared, in case the needs of the community demand them, to make still further sacrifices. If he is to preserve himself, he must be prepared to defend himself when attacked; and if the community is to be preserved, he must be prepared to defend it when it is attacked, and to sacrifice his life, if need be, in its defence. Unless each citizen is prepared to sacrifice his own life for the safety of the community, the existence of the community is but precarious, and, when occasion arises, will come to an end. As, in the scheme of nature, the welfare, and even the existence, of the individual count for

nothing in comparison with the preservation of the stock, so, in social animals, the welfare, and even the existence, of the individual count for nothing in comparison with the preservation of the community. "The individual withers, but the race is more and more," expresses but one half of the biological truth. It is equally true, and equally pertinent, to say that the individual withers, and the community is more and more. Thus, the self-regarding instincts and the social instincts are of necessity in frequent conflict; and it is vital for the community, and for the race also, that when this conflict takes place, the social instincts should be victorious.

There is conflict also, though the conflict is less frequent, between the social and the racial instincts. The community is founded on the family. Solitary animals, as soon as they attain an age at which their powers and faculties suffice for their own preservation, separate from their parents; with whom they subsequently compete for food and other necessaries of life. The first beginnings of social life are made when the dispersal of the offspring is delayed; and when it altogether ceases, social life is established. Society is held

together by the bonds which unite the family. The family is the social unit, and is, in the beginning, identical with the community. As, with successive generations, the family increases into the tribe, the bonds of family are enlarged and modified to include the tribe; and, with further increase in number, families become differentiated within the tribe, which then consists of a plurality of unit-families. The family is the foundation on which are built, first the tribe, and then the nation; and anything that interferes with family life, or slackens its bonds, is disintegratory to the nation also. Hence has arisen an instinct, or, rather, a set of instinctive desires, safeguarding the family. Sexual jealousy tends to keep the family intact and pure; chastity, and its auxiliary, sexual modesty, help to keep down internal strife within the community; parental and filial affection bind the family together, and also secure the upbringing of the offspring. But these racial and social-racial instincts, though in the main they strengthen the bonds that hold the community together, yet, in some of their manifestations, are disintegratory of society, and therefore conflict with social instincts. Jealousy leads to strife;

and strife is disintegratory. Sexual love, the foundation of society, may be so directed as to break up the family, and so tend to disintegrate society. Parental affection may lead in various ways to acts that are anti-social. It may lead to acts that, favouring the children, are dishonest towards others; it may lead to the withdrawal of the children from their social duties; it may prompt the parent to incite the child to elude military service, for instance; it may train the child, by over indulgence, to indifference to the rights and feelings of others; it may lead the parents themselves to shirk their social responsibilities in order to devote themselves more completely to the welfare of the children. And filial affection may produce corresponding defects in social conduct.

We find, therefore, that man possesses three sets of instinctive desires, impelling him to seek three different ends; or, more strictly, to seek one main end—the perpetuation of the race—partly directly, and partly through the intermediation of two others—the conservation of the individual self, and the conservation of society. We find that while, on the whole, the three ends harmonize, and effort towards

each is necessary to the attainment of the other two, yet there is a certain antagonism amongst them, and each can be attained only by the sacrifice of some effort in respect of the others.

Of these three ends, or aims, or purposes, of life, all are of great antiquity in the history of our race; but all are not of equal antiquity. The end of reproduction is primordial. It is the underlying reason of all life, both animal and vegetable. Self-preservation is of equal antiquity, but not of equal importance; for as soon as reproduction is effected, self-preservation ceases to have a biological value, and, in many cases, automatically ceases to operate. In the early stages of the life of more developed organisms, self-preservation furnishes the main, it may be the sole, motive to effort. When the reproductive age is reached, the reproductive instincts rush to the front, take the lead, and reduce self-preservation to a subordinate position. The social instinct is of much later origin. All the way up the long line of the evolution of living forms, from the unicellular organisms to our quadrumanous ancestors, reproductive activity divided with self-preservative activity the

energies of living beings. Only when a stage was reached which, though in comparison with the duration of a single human life, is of enormous antiquity, yet, in the long process of evolution, is of yesterday, was social life begun. Now, *ceteris paribus*, the strength of an instinctive desire is in proportion to its antiquity in the race in which it exists. Other factors enter into the determination, it is true; but other things being equal, that instinct is dominant which is of greater antiquity; and it is dominant in proportion to its antiquity. For this reason, the social instincts are, upon the whole, and in the majority of people, inferior in urgency to the reproductive and the self-preservative. When a social instinct is brought into conflict with either of these other instincts, it will, therefore, be at a disadvantage, and will give way and be overpowered, unless it is reinforced by some additional motive. Yet, although social conduct is historically of later origin than racial and self-preservative conduct, it now ranks in urgency before either of them. The preservation and continuation of the race may go on undisturbed, though individuals renounce their reproductive action, or are

deprived of it; though individuals sacrifice their lives, or are deprived of them; but, except in communities, man can no longer exist. Destroy the community, and, unless they are absorbed in some other community, all its individual members perish; and with them perishes the stock of which they are a stage. Hence, although the social instincts are, by their later origin, weaker than the other two, they are of primary importance; and, for the preservation of the majority of individuals, no less than for the continuation of the race, it is essential that, when there is conflict between social action and either racial or self-preservative action, the first should prevail.

In these conditions, the social instinct has borrowed, for its own behoof, a weapon from the armoury of one of its antagonists. It has impressed the desire for self-preservation into the service of social preservation. This is the function of the criminal law. Criminal law is founded on the recognition of the fact that the social instincts are not of themselves powerful enough to overcome, unaided, the self-regarding instincts. Our self-regarding instincts impel us to acts that are inimical to

the social state; and the social instincts alone are, in many cases, insufficient to restrain us from such acts. To add to our motives for restraining such acts, the criminal law punishes us for doing them.

Crime, in a wide sense, consists of acts that are forbidden by law; and law forbids those acts that are inimical to the cohesion of society. I do not say that acts are forbidden by law because they are perceived to have this effect; nor that all acts forbidden by law are of this nature; but that the law does, in fact, forbid those acts that would, if permitted, result in the disintegration of society. They are acts which a complete development of social instincts would prevent us from committing, because such complete development would render them abhorrent to us. Already, the social instinct is sufficiently developed, in almost all members of Western nations, to render some crimes, such as matricide, inherently so abhorrent, that they are practically extinct. Yet, in primitive communities, or some of them, matricide, so far from being regarded as a crime, is openly practised, when the mother becomes old and infirm. We see, in communities of social insects, the complete

subordination of the racial and self-regarding instincts to the social instincts. Every hive of bees, every nest of wasps or ants, is a crimeless community. It is free from crime, not because of the severity of its criminal law, or of the vigilance of its police, but because the instinctive desires of its members have been brought into complete harmony with its social welfare. As for the racial instincts, one half of them—the reproductive instincts—have been altogether lost by the workers of the community. The production of offspring is delegated to a single mother; and towards her offspring, every worker in the community acts *in loco parentis*. Except in consuming food enough to keep itself in vigorous bodily health, the whole of the energies of every member of the community are devoted to securing, not its own welfare, but that of society at large. All the property goes into a common fund. No individual appropriates to itself anything beyond the food she consumes; or hesitates for an instant to sacrifice her life, or the lives of her brothers, for the benefit of the community. At one season of the year there is, in every hive of bees, a rebellion; or a succession of rebellions; but the

rebellions are carried out without bloodshed, and the revolting section of the community merely departs and founds a new colony. Bees, ants and wasps are, in fact, perfectly socialized. Their instinctive desires are brought into complete harmony with the needs of the social state, and consequently they are crimeless; for this is the condition, and the only condition, under which crime disappears from want of motive to perpetrate it. The interested observer may notice that, in the most advanced human societies, there is a considerable section of the female population that renounces the reproductive function, and devotes a large share of its energies to working for the welfare of the community at large, in some of the multifarious ways by which the poor, especially, are benefited.

CHAPTER II

INSANITY

INSANITY is usually regarded as synonymous with mental disorder. Insanity and mental disorder are different names for the same thing. This is, in my opinion, a very erroneous view, and is, I think, no longer tenable. I have been arguing against it for many years, and my protests are at last beginning to have some effect. Insanity is much more than mental disorder; and mind is often disordered without any vestige of insanity. It is unnecessary to enumerate here all the factors that go to make up our concept of insanity; it is enough to say that it is disorder of the process of adjusting the self to the circumstances, and that it is primarily manifested in disorder, not of mind, but of conduct.

It is necessary to expand this expression in some little detail. What is characteristic of

insanity is disorder of conduct; and conduct may be strange, bizarre and extraordinary, without being disordered. Disorder of mind, if we construe this expression in a wide sense, is always present in insanity; but, in the first place, it is not necessary that this disorder of mind should be intellectual disorder; and, in the second, there is much disorder of mind that is not insane.

There is a widespread opinion that not only is disorder of mind *ipso facto* insanity, but that disorder of mind in insanity is always disorder of intellect; that is to say, that it must consist in delusion, or in faulty judgment or knowledge. It is very frequent to hear the opinion that such a person is not insane, because he has no delusion. Such a judgment is a *non sequitur*. Apart altogether from delusion, and disorder of judgment, the mind may be disordered in any of its other departments; and this disorder may or may not amount to insanity. Feeling is often disordered without any delusion. The subject of disordered feeling is depressed and miserable, or is exhilarated and joyous, out of all relation or proportion to the depressing or exhilarating nature of his circumstances; and this depression or

exhilaration is disorder of mind. But it is by no means necessarily insane; for the subject of it knows perfectly well, in very many cases, how irrational and uncalled-for his depression or elevation of feeling is; and regarding it as morbid, recognizing its morbid quality, he may seek advice to rid himself of it. The sufferer from agoraphobia or claustrophobia —fear of being in open spaces or in closed spaces respectively—is quite fully aware of the unreasoning character of his panic, and of its utter want of foundation in any real danger; but none the more is he able to surmount or to ignore it. The horror is to him only too real; and however he may assure himself of its baselessness, he cannot thereby overcome it. He suffers from a painful and distressing disorder of mind; but, as he recognizes and appreciates to the full that it is a disorder of mind, he is not insane, nor is he within measurable distance of insanity.

So, in the victims of obsession and imperative idea, the mind is disordered. Such persons feel within themselves an urgent impulsion to do things that are abhorrent to them, or are possessed by thoughts that they know to be absurd. The loving mother, as she is dress-

ing her children, feels impelled by a craving, which she regards with horror, to stick pins into them, or even to cut their throats. The religious and devout person is impelled to utter words and phrases of obscenity and blasphemy, that are utterly abhorrent to him. The minds of such persons are disordered, but as they recognize that the mental state or process is the result of disorder, they are not insane.

There is also moral disorder, which is disorder of mind, and may amount to actual insanity, but is unaccompanied by any delusion or by any discoverable disorder of intellect. In such cases, the intellect may be acute, and the reasoning powers equal to, or above, the average; but the person affected has an incurable kink in his mind, which renders him insensible to the obligations of morality.

We must recognize that there are divisions or levels of both mind and conduct; that mind and conduct may be simultaneously and concurrently disordered on any level, with or without any disorder of other levels; and that it is only when the highest level is disordered that insanity exists.

Nothing gives a clearer notion of the functions of the nervous system, and its disorder in insanity, than its comparison to the government of a country, an army, a business, or a ship. It is a comparison that I have often employed, but it is none the worse on that account. Every organ in the body has its own ganglia, or patches of nerve tissue, by which its functions are directly and immediately regulated; by which its activity is called into play or lulled into repose; by which its nutrition is regulated according to the waste that it suffers, and its other needs. On this level, there is a centre for the muscles that bend the arm, and a centre for those that straighten it; a centre for the muscles that close the eye, and a centre for those that open it; centres that regulate the activity of the liver, the stomach, and so forth. These lowest centres correspond with the non-commissioned officers in the army, with the petty officers in the navy, with inspectors in the Government service, with the station-masters in the organization of a railway; their jurisdiction is strictly local and limited. They have a certain autonomy, a plenary authority over their own small department, but they are them-

selves under the orders of higher officials, and their duties are of a routine and quasi-mechanical character. They admit of little variation, of little spontaneity or originality. Their function is mainly to obey orders and to carry out routine.

Over these is a group of officials of a higher rank, and with a more extended jurisdiction; with larger powers, and more initiative. Centres of middle rank correspond with the colonels of regiments, with the managers of departments, with the under-secretaries of state. These centres control, not merely movements, but many acts also—such acts as are done instinctively and automatically, and do not need deliberate choice to effect.

Lastly, supreme over all is the governing faculty, answering to the commander-in-chief of the army, to the Cabinet in the government of the country, to the captain of the ship, to the directors of the business. It is the function of this highest faculty to deliberate and determine questions of policy; in what directions and to what purposes the powers of the whole organism are to be turned; what to do, and how to do it. The highest faculty of mind is the ability to choose. In insanity this faculty

is not necessarily lost, though in the deeper degrees of insanity it is much impaired; but it is disordered. In order to compass a certain end, conduct is chosen which is plainly calculated to defeat that end. Such conduct and such choice are insane.

Mind and conduct go together. Their interaction on each other is close, constant, and almost inextricable; and disorder of the one always, no doubt, accompanies disorder of the other; though the two disorders are not always equally prominent, or equally recognizable. Whatever level is disordered, the disorder is manifested, both in mind and conduct, on that level; and hence, with crude disorder of mind goes crude disorder of conduct; and with elaborate disorder of mind goes elaborate disorder of conduct.

Giddiness may be taken as a very familiar example of very crude disorder of mind—of disorder of mind on the lowest level; and this disorder of mind has its expression in an equivalent disorder of conduct, which also is crude, and on the lowest level of conduct. It finds expression in the reeling, and staggering, and clutching at support, that we know accompanies giddiness. The maintenance of

equilibrium is a mode of conduct; and the disturbance of this maintenance, that occurs in giddiness, is a disorder of conduct. That it would not always, or by all, be considered a disturbance of conduct, but rather of some lower function, to which the title of conduct should scarcely be assigned, is owing to its crudity of character, and to the fact that the disorder leaves unaffected the superior levels of conduct. The clutchings at support are manifestations of disorder on a low level, but of order on a higher level. They are in themselves abnormal, the expression of an abnormal state of mind, viz. giddiness; but they express also the compensation that is designed by a higher level of mind, to correct the disorder of the lower level. The perception of the outside world as rotating, is a disorder of mind; and the reeling and swaying are conduct, the result of this disorder; but the clutching at supports is normal conduct, prompted by a higher level of mind, that is, free from disorder, and acts to counteract the effect of the disorder that exists lower down.

Similarly, on the middle level there may be disorder, counteracted and corrected, as far as counteraction and correction are possible, by

the normal working of a higher level. The claustrophobic person has horror and panic at being in a closed apartment. The agoraphobic experiences similar horror and panic at being in an open space. The horror and panic are disorder of mind; but the disorder is not on the highest level of mind. Above the level that is disordered, there is a higher level of mind, that knows and recognizes that there is disorder below, and that dictates measures to counteract and correct the disorder. The sufferer not only keeps the door or the window open in the one case, or hugs the wall or the railings in the other—manifestations of conduct that are the result of the disorder—but, recognizing the existence of disorder, he consults a physician with a view of being relieved of it, thereby evidencing the action of higher levels of mind and conduct that are undisordered.

So, too, in obsession to do unreasonable, objectionable, and even lethal acts, the disorder is on a level that is high, but is not the highest. The patient is strongly inclined and tempted to use objectionable words, and to do objectionable acts; but at the same time he loathes the very words and acts that he is

impelled to utter and to do. Often, the disorder of mind produces disorder of conduct, and he does utter the words he detests; but all the while a higher level of mind tries to restrain the utterance; and this higher level prompts him, if the act dictated by the disorder is dangerous, to put himself under restraint; to apply to the police, or to a lunatic asylum, to be locked up, and physically restrained from expressing the disorder of mind in disorderly acts.

It is only when the highest levels of mind and conduct are disordered that insanity exists; and the test of insanity is, roughly, the non-recognition of the disorder. A disorder of mind that is recognized and known to be disorder, is not insane; though the disorder of lower levels may be so tumultuous and overpowering as to be beyond the competency of the higher levels to keep it in check; and then, as in the case of the obsessed person who applies to be restrained, much the same measures must be taken as in actual insanity. In true insanity, the insane person does not recognize that either mind or conduct is disordered. He regards his feelings, his judgment and his acts as the normal response to

his surroundings; for, in him, the disorder is in the faculties of judgment and choice, and the rectifying faculties being themselves disordered, rectification is no longer possible.

This being, in the most general terms, the nature of insanity, we may now examine it a little more in detail; or rather, we may shift our point of view, and notice the several ways in which the highest faculties—the topmost level—of both mind and conduct may be disordered. We find, in experience, that disorders may affect both mind and conduct in many ways; and that, while the disorders of mind and of conduct are usually proportionate to each other, there are many exceptions, or apparent exceptions, to this rule.

In the first place, we notice a variation in the width, area, or extension of the disorder. It may be widespread, or it may be very limited. It may involve the whole of mind, in every department or faculty, even to total abolition of them all, and then the state is one of coma or unconsciousness; or it may seize upon a single faculty, or a small part of a single faculty, and affect that alone. It may, for instance, fix upon the feeling of well-being, and produce a state of misery or melancholy

affecting the whole of that one faculty, if so it may be termed; or it may be so limited as, in the field of judgment or belief, to produce but a single delusion, leaving the power of judgment as to other beliefs apparently unaffected. It may vary much in depth, and may, in one case, vitiate the highest processes only of mind, disenabling the patient from exercising a valid judgment as to the main ends that he ought to pursue, but leaving him exceptionally competent in his choice and devising of means to compass these ends; or it may involve his faculties so deeply, that he is deprived even of such simple modes of conduct as dressing and undressing; and leave him, at length, too demented even to carry his food to his mouth. In duration, it may vary from a few seconds to a lifetime. It is impossible to judge competently of the ways in which insanity may affect criminality, unless all these variations are kept in mind. The proneness to criminality that insanity produces, is independent of any one of these factors. Crime may be committed as the result of a transient insanity, lasting only a few minutes or seconds; and a person may not ever be prompted to crime during a lifelong

insanity. Crime may be the result of insanity that is widespread, and affects every mental faculty, or of a single isolated delusion. It may result from the mere blunting of the keen edge of judgment; and it may not result from a profound distortion of intellect, feeling and desire. It is in other factors in insanity that the origin of crime, when crime is committed by the insane, is to be found; and it cannot be too strongly insisted on that insanity no more necessarily leads to crime than it is a necessary ingredient in crime; that the insane are no more necessarily to be absolved, on account of their insanity, from crimes they may commit, than are the sane. Criminals are no more exempt from insanity than other people; and when an insane person commits a crime that is not the consequence of his insanity, it is no more just or proper to excuse him from punishment for that crime, than to excuse a sane person.

This being understood, we may now study the main forms of insanity that do conduce directly to crime, and observe the qualities of the insanity that render the subject of it likely to commit crime, as a consequence of the insanity. In so doing, I must guard

myself against any supposition that I am here setting forth any exhaustive or symmetrical classification of forms of insanity. I merely select, and briefly describe, those that experience shows are apt to result in crime.

The insanity that is most frequently associated with crime, and directly leads to crime in a large number of cases, is undoubtedly the insanity of drunkenness. In nine years, one and three quarters of a million of persons were sentenced, in courts of summary jurisdiction in this country, for offences committed during drunkenness, and to which the drunkenness contributed, even if it were not, in every case, the efficient cause, without which the offence would not have been committed. I have no record of the number of cases sentenced in the superior courts for graver offences, but it is undoubtedly very large; and the testimony of many judges, magistrates, police court missionaries, and other persons in a position to know, is very strong, that, upon the whole, drunkenness is the most fertile cause of crime, in the extended sense in which the term crime is here used.

No doubt, it will seem to many who come upon this statement, that to regard drunken-

ness as insanity, and the offences prompted by drunkenness as an example of the offences due to insanity, is a novel, and not altogether a justifiable, way of looking at the matter; and that the word "insanity" is used, in this connection, in somewhat of a metaphorical and illegitimate sense. This is far from being the case. It is literally and exactly true that drunkenness is insanity; that as long and as far as a man is drunk, so long and so far he is insane. Alcohol is but one of many poisons that may produce insanity. Some of these are, like alcohol, of vegetable origin; others are minerals; and others are the products of animal life; but their agency and efficacy in producing insanity are undoubted. Much insanity, of which the origin was for long unknown, is now discovered to be due to poisons; and by administering other poisons than alcohol, insanity can be experimentally produced. Not only is delirium, which is, of course, a form of insanity, a constant feature at the height of every severe case of specific fever, but it is not at all infrequent for insanity to follow specific fevers, as a result of the poisoning of the brain which they produce. Many vegetable poisons, such as

those of belladonna, opium, and Indian hemp, produce, like alcohol, a temporary delirium; and, as with alcohol, their prolonged use renders the insanity permanent. There are some cases of insanity that are not produced by alcohol, but are of a permanent character, and depend on organic disease of the brain produced by other poisons, and yet present symptoms indistinguishable, or distinguishable with difficulty, from the insanity of drunkenness; and from whatever point of view we regard drunkenness, we cannot fail to see that its nature is that of a transient and toxic insanity.

Drunkenness is insanity;* and from its frequency, from the ease with which it may be experimentally produced, and from the absence of any permanent harm from an occasional bout of drunkenness, it forms a convenient subject in which insanity may be studied. When studied, we find in it the following features, which we may be sure are present, *mutatis mutandis*, in insanity due to other causes, and are characteristic of insanity throughout.

In the first place, the insanity differs with the amount of the poison taken at a dose. If a single dose of alcohol is large enough, the

consequence is the production of a state of coma, in which consciousness is altogether abolished; conduct is altogether abolished; and the drunken person lies insensible and unrousable—dead drunk, as it is called. It is important to know that a person in a state of coma, whatever the cause of the coma, is dangerously ill, and is within measurable distance of death; and the coma of drunkenness sometimes terminates, then and there, in death. As with any other poison, the dose may be increased until it is *ipso facto* fatal.

Short of the condition of coma, in which mind and conduct are both abolished, drunkenness produces confusion of mind and inefficiency of movement of various degrees, according to the magnitude of the dose taken. On the side of mind, the first effect is usually an increase of nimbleness and cleverness, together with an impairment of prudence, so that the drunkard can say and do things more clever than he can say and do when sober, but these clever things are not altogether appropriate to the circumstances in which he is. He is apt to make enemies by the causticity of his remarks; or he will do, in a clever way, something that is intrinsically foolish. On

the bodily side, he loses the accuracy and nicety of his finer movements. His handwriting loses its neatness; his articulation loses its clearness. As the drunkenness proceeds, his articulation becomes thick, and his handwriting sprawling; he can no longer pick up a pin, or undo a button, or tie a string; even his gait now becomes affected, and he reels and staggers. By this time his mind is more deeply affected, and now we find that different people display their drunkenness in very different ways; showing, beyond question, that the signs of insanity are due in part only to the agent that causes the insanity, but in part also, and, in this case, in main part, to the nature or character of the person to whom the agent is applied. Thus we find that one person in his cups is merely stupid. His mind is confused and inappreciative, and his conduct lethargic. He sits staring stupidly in front of him, and does not attend to, or appear to understand, what is said to him. Another, in the early stage of drunkenness, becomes maudlin; he tells how badly he has been treated, and weeps over his sorrows; a third becomes quarrelsome; a fourth morose; a fifth brags of his accomplishments and

achievements; and a sixth becomes acutely maniacal, strips himself naked, and smashes the furniture.

Hence we find that the offences to which drunkenness leads are multifarious in character. Besides the ordinary charges, of drunk and incapable, drunk and disorderly, drunk and resisting the police, and so forth, drunkenness is a factor in many other offences, and is the efficient cause in many. Not only does the quarrelsome drunkard commit crimes of violence, and the morose drunkard resist the police, but there are certain cyclical phases in most cases of recurrent insanity, which are exhibited punctually in the insanity of drunkenness. In recurrent insanity, it is well known that the same features characterize each successive attack in the same person; and this repetition of similar features is not a mere general resemblance, but often extends into minute details. In one case, the attack of insanity was always heralded by upsetting the morning bath; in another, the early symptoms were the purchase of pigeons and a dog; in a third, indulgence in playing the cornet was a certain indication of the oncoming insanity. The late Mr. Justice

Walton told me of a similar repetition in drunkenness. He had repeatedly tried, on circuit, a woman who always, when drunk, stole a piece of bacon. She never stole unless she was drunk; and, when drunk, she never stole anything but a piece of bacon. The attraction of bacon was then irresistible to her; and she had repeatedly suffered imprisonment for this offence.

Offences committed during the insanity of drunkenness stand on a very peculiar footing. Seeing that the offender, when he committed the offence, was insane, ought he to be punished for acts done in a state of insanity? Many persons, and many authorities on insanity, would answer the question, thus baldly put, in the negative; but it would be so dangerous to allow the plea of drunkenness in excuse for crime, that such a rule is clearly impracticable. On the other hand, it seems that if a man chooses voluntarily to drink himself into a state in which he commits offences, and becomes a danger to society, he should be punished to the full for any offence that he commits in the state to which he has reduced himself by his own self-indulgence. Yet the consequences of a strict adherence to such a

rule would be almost equally abhorrent to the sentiment of justice. Ought the woman who stole a piece of bacon whenever she was drunk, but who was strictly honest as long as she was sober, to be treated with the same severity as the ordinary habitual thief? Few people would be found to hold this opinion. Ought a man who kills another in a drunken affray, not cherishing any animosity against his victim; not knowing, in any full sense of the words, what he is doing; and not retaining, after he becomes sober, any but the haziest remembrance of what took place; to be punished with the same severity as a brawling ruffian who, in his sober senses, beats a man to death? Few people would hold so severe an opinion. It seems clear that some *via media* ought to be found, by which drunkards should be punished for acts done in drunkenness, but should not be punished with all the severity that is visited on similar acts done by the sober. English law has formulated a practical rule, which works fairly well, and on the whole secures substantial justice, though it is, I think, susceptible of improvement. The law of England lays down the maxim that drunkenness is no excuse for crime;

and thus deprives the drunkard of the plea that, at the time of committing the offence, he did not know what he was doing; a plea which would evidently render it possible for any one to commit crime with impunity, who took the precaution of getting drunk before its commission. Yet, whenever a prisoner is charged with a crime into which intention enters as a material factor, it is open to the defence to show that he was too drunk to be capable of forming an intention; and if the plea is established, the offender cannot be convicted of the particular offence to which intention is necessary, though he may be convicted of a minor offence, into which intention does not enter. These two rules, somewhat contradictory and illogical as they appear, yet, in practice, secure substantial justice in the cases that come before the courts; but it is probable that these cases might be much diminished in number.

Whenever a man is brought before a court of summary jurisdiction for his first offence of drunkenness, he should, in my opinion, receive a punishment of such severity as to make him think twice before he reduces himself again to the same state of incapacity.

The usual course, of letting him off with a trifling fine, or a few days' imprisonment, has been shown, by the experience of several generations, and of hundreds of thousands of instances, to be utterly futile and inefficacious. It has not, apparently, the slightest deterrent effect; and the same offender receives these sentences, hundreds of times repeated, without amending his conduct in the least. As will appear later on, I am of opinion that no insane person should be punished, for any offence, with the same severity that would be just in the case of a sane person; but when the offender brings about, by his own voluntary act, the state of insanity in which he is prone to commit offences, he should, in my opinion, be punished for bringing himself into this state, and punished with a severity proportionate to the danger which society incurs by his doing so. If every person charged with wilful drunkenness, or with any offence committed in a state of wilful drunkenness, were to be punished, on the first offence, with six months', or even three months', imprisonment, without the option of a fine, charges of drunkenness would be enormously diminished; the number of habitual

drunkards would be sensibly reduced; and the task, both of police and police magistrates, rendered very much easier. Drunkenness is now regarded with a very different eye, it is true, from what it was when it was considered the mark of a milksop to go sober to bed, and every one who desired to be in the fashion must, of necessity, get drunk overnight. It is now regarded as a disgrace; but it is not sufficiently regarded as an offence. It is an offence. The drunkard is as much a danger to society as a lunatic at-large, which he is; and when he commits an offence in consequence of his drunkenness, he should, in my opinion, be punished, not so much in proportion to the gravity of the offence committed when drunk, as in proportion to the deliberateness of the intention with which he brought himself into this dangerous state.

The mode of insanity that, next to drunkenness, most frequently leads to crime, is feebleness of mind. It is difficult to attach to this condition any more definite name, or any more definite meaning. It is a general silliness, often accompanied, however, by reticence, born of suspicion and antagonism to constituted authorities—a reticence that

often masks the weakness of mind, so that it is not discovered unless and until the silly person is kept for some time under observation. A considerable proportion of crimes is committed by persons of this description; and the prison authorities find among their charges a considerable minority, that is variously estimated, of such persons. The number is variously estimated on account of the elusiveness of the defect. There are so many degrees of stupidity, and the simple occupations and surroundings of prison life make so little call upon the intelligence, that it is by no means easy, especially when the prisoner is suspicious, and regards all interrogation as a trap to make him commit himself, to estimate the amount or degree of defect in his intelligence. Only after prolonged observation is it possible, in many cases, to come to a definite conclusion; but in these cases it is found, after a time, that the prisoner is deficient; and, if his history can be ascertained, it is found that he has always been "soft." At school, he never attained the standard of the normal boy of his age. Since leaving school, he has been unemployed, or has had casual employment of the least

skilled character; and his lack of employment has been due partly to intellectual and partly to moral defect. He is lacking in the intelligence necessary for the acquirement of a skilled calling; and he lacks also the steady purpose that is equally necessary. Commonly, his parentage and upbringing have been such that he has lacked the opportunity also; but even when he has had the opportunity, he is unable to avail himself of it. With the intellectual obtuseness goes a moral obtuseness. Such people recognize that stealing is a practice which is frowned upon by authority, and will be punished if discovered; but it is doubtful whether they see in it anything intrinsically wrong—it is certain that they do not appreciate its wrongness to the full. Knowing no trade; having no labour of value to offer in the market—lack of intelligence depriving their labour of much of the value it would otherwise have—deficient in self-control; restrained by no definite sense of morality; such persons take easily to crime; and, as has been said, an appreciable proportion of the inhabitants of prisons belong to this class. The crimes of which they are convicted are usually petty

thefts, often repeated, and acts of violence, the results, often, of drunken squabbles; for this and the previous class overlap, and a considerable proportion of habitual drunkards, as well as of habitual criminals, belong to the feeble-minded class.

The next class of the insane who contribute to the population of prisons, are the epileptics, and the crimes they commit are almost always crimes of violence. Epileptics are by no means necessarily insane, many being of high, and even of stable intelligence; but a certain proportion of epileptics are insane, and a certain proportion of the insane are epileptic. The important aspect of epilepsy, to the criminologist, is not that some insane are epileptic, nor that some epileptics are insane; but that all epileptics are subject to lapses of consciousness, during which they do things without knowing that they do them, and without retaining thereafter any recollection whatever of what they have done. In the vast majority of cases, the things done during these lapses of consciousness are merely the performance of convulsions which do not assume the nature of acts; but in a minority of cases, acts are done, it may be

with, it may be without, previous convulsion. Even of the cases in which acts, apparently purposeful, are done by epileptics, in association with their convulsions, it is only a small minority in which the acts are criminal; but by a small proportion of epileptics, criminal acts, usually acts of violence, are done in association with the fits.

The fits of epilepsy are very striking occurrences, and appear, at first sight, to be *sui generis*, and to be like nothing else that occurs in the human body; but, upon careful study, other recurring crises are found to take place, which have at least this in common with epilepsy—that they are recurring crises. In the common epileptic fit, consciousness is lost, the patient suddenly falls senseless and powerless; and while he is thus unconscious, the muscles of the whole body are convulsed for the space of some seconds, or of a minute or two. On the cessation of the convulsion, the patient is still senseless or comatose, and this coma gradually lightens into a sleep, from which the patient at length awakes, or can be aroused. Of the time that he was senseless, of his fall, of his convulsions, he remembers nothing when he emerges from his

sleep. This is the ordinary course of events; but it is subject to many variations.

In the first place, the fit may not come on with the electric suddenness that is usual. The patient may, and in many cases does, have warning of what is about to happen. The warning felt by the patient precedes the fit by but a very short time, but the approach of a fit is often known to those about the patient by an alteration of his demeanour, which may be hours or days in duration. He may become irritable, captious, and quarrelsome; or he may become dreamy, lethargic and stupid; or show some other change in character. The amount of the convulsion varies very widely. In the type, it is universal, and implicates every voluntary muscle in the body; being powerful enough in some cases, it is said, to break the bones; but it is not always universal, or even widespread; nor is it always severe. In many cases it is represented by a temporary twitching of the fingers; by a clicking of the tongue; by a pallor and lividity even, or a mere turning of the eyes. Instead of falling, the epileptic may merely droop a little; his knees give way for a moment; his head droops; or, without these signs, he

stops still in his walk, or in whatever he may be doing; and this is all. Such are the signs of minor epilepsy, or *petit mal*. The great peculiarity of epilepsy is, however, in the occurrences that take place after the convulsion is over. When the convulsion is very severe, it is followed, as we have seen, by coma, merging into sleep, from which the patient wakes with a total blank in his memory, dating from the moment in which he was seized. He knows nothing of the fit, and is merely able to guess that he has had one, because he finds himself lying on the floor, waking from sleep, immediately, so it seems to him, after he was brushing his hair, or engaged in some other avocation. But between the period of powerlessness that follows the severe fit, or the temporary drooping or twitching that constitutes the mild fit, there is often interposed a period of action, in which the epileptic does things of which he appears to be unconscious at the time, and of which he retains afterwards no memory at all. This action is of a very curious character, and has features by which it can usually be recognized without difficulty to be unintentional. It is sometimes, however, difficult to

distinguish it from normal action, or to be sure, or even to suspect, that the patient is not fully aware of what he is doing. When the act is criminal, as it may be, it is of the last importance to determine whether it was committed in the automatic stage of epilepsy, or whether it was the deliberate act of a conscious being; and the determination is sometimes by no means easy.

Study of the phenomena of epilepsy shows that certain rules govern the occurrences that take place in and after the fits.

In the first place, all the fits, in any one case, resemble one another in the way they begin and proceed, though they may differ very widely in the extent to which they proceed. In some cases, all the fits are of the major type, though they vary to some degree in their severity. In others, all are of the minor type, and again vary, though to a less degree, in severity. In a third class, both major and minor fits occur in the same case, and these may be regarded as wide variations in severity.

As a general rule, which is, however, not constant, post-epileptic automatic action is more conspicuous and prolonged after minor

than after major fits; and action of this kind never, I think, follows fits that are extremely severe.

Another rule, which is far more constant, is that, when automatic action does take place after any one fit, it follows other fits in the same person.

Equally constant is the rule that the automatic action, if any, is always of the same type in the same case. The action is not necessarily the same, but it has the same general character.

Lastly, the action, in post-epileptic automatism, is usually the caricature of some normal action that is habitual in the actor. It is a caricature of normal action in that it is, if at all elaborate, wanting in some essential element in the normal action. The post-epileptic automaton who finds a pen in his hand, will go through the movements of writing with it; but he will neglect to dip it in the ink; or, if he goes through the movement of dipping it in the ink, will not hit the ink-pot, but dip it anywhere. The movements will be a caricature of the movements of writing, in that they will be mere meaningless scribbles, without formation of words. A

woman will go through the movements of sewing, but her needle will not be threaded; or of cutting out, but she will cut her material into useless fragments. If the action is a very simple one, such as that of walking, it may be normally performed, but the automaton will be apt to walk among traffic, so as to be run over. He may, however, avoid obstacles, and evade other pedestrians.

These rules have a very important application to the determination of responsibility for criminal acts, done in what is supposed to be post-epileptic automatism. When it is suggested that a criminal act was post-epileptic and automatic, it is important to show that the action is of an habitual character, or resembles one that is habitual in the actor; and all automatic acts of the same person are of the same general nature. One act, that is habitual with every one, is that of passing water; and in post-epileptic automatism this act may be caricatured, not only by passing water at an inappropriate place or time, as, for instance, in public; or into a hat, or other incongruous receptacle, but it may be caricatured in such a way as to lay the person open to a charge of indecent exposure. A soldier or

a sportsman who is epileptic, and finds, after a fit, a gun ready to his hand, may load and fire it, for to him this action is habitual; but a person unaccustomed to the use of firearms would never do this act in post-epileptic automatism. A woman who had a fit while cutting bread and butter for her children's tea, used the knife in such a way as to cut her child's arm, and the act was proved to have been done automatically; but in another case, in which a woman had thrown her child into the water, the suggestion, that the act was done in post-epileptic automatism, should never have been made, and could not have been sustained; for the act of throwing a child into the water, or even of throwing a bulky object away, is not habitual with any one.

If the act is one of the same character as acts that have been done, in previous post-epileptic states, by the same person, the presumption that it is automatic is strengthened. A man cut the throat of a child. It was shown that he was subject to epileptic fits, and that, in the unconscious stage following the fit, he had often done acts of violence. The act of cutting a person's throat is not habitual, it

is true, with any one, but the act of cutting is habitual with many people, and the fact that previous fits had been followed by acts of violence, established a presumption that this act of violence was done in post-epileptic automatism.

The crimes whose connection with epilepsy it is most difficult, to establish are those that are committed in the condition known as *épilepsie larvée*, or masked epilepsy. In some cases of epilepsy, the epileptic, at the time that a fit is due, may do some extraordinary and outrageous act, that may be criminal, without having any definite fit, and yet without any knowledge, or without any subsequent remembrance, of the act. For instance, a woman who is subject to recurring epileptic fits, on one occasion, when a fit was due, went down to a ferry boat and crossed the river. She had no business on the other side of the river; and though she remembered going on board the boat, she did not know why she went there. On arriving on the opposite side of the river, she did not land, but made the return voyage; and when it had recrossed the river, again she did not land, but remained on the boat, and departed on

it toward the opposite shore. When she had gained mid stream, she threw herself into the river; and of this she subsequently retained no recollection at all. The whole series of acts was irrational. She had no good reason for going on the boat at all. She had no sufficient reason for remaining in the boat for the third voyage; nor had she any desire to commit suicide. The whole course of conduct was irrational, and culminated in an outrageous act. There seems to be no doubt that in this case, the conduct took place while she was in a dazed condition, and that the culminating act was committed in a state of unconsciousness; nor does there seem any reasonable doubt that this dazed condition was the result of a morbid action of her brain, which occurred at the time an epileptic fit was due, and was owing to a transformation or modification of the epileptic fit into morbid action of an allied, but different, character. In this case, the act was detrimental to no one but herself; and though it was technically a crime, and she was charged before a magistrate with attempting to commit suicide, it is not one that is usually punished as criminal. In many cases, however, acts of the most

atrocious and brutal violence are committed in somewhat similar circumstances; and, when the offender is known to be subject to epilepsy, there is little difficulty in establishing the plea that the act was committed while he was in a state of masked epilepsy. The great practical difficulty is that, in many such cases, in which crimes of frenzied and horrible violence are committed without assignable motive, or with very inadequate motive, the occurrence of previous attacks of epilepsy in the criminal cannot be proved. Not long ago, a man was discovered by the roadside dismembering the body of a woman. He had attacked and killed the woman, who was previously unknown to him, had stripped her body of its clothes, had cut off her head, and was engaged in cutting off her arm when he was discovered. To the exclamations of horror by the man who discovered him, he replied by holding up his victim's stays and umbrella, and saying that he could get eighteenpence for them. There was, in this case, no evidence that the murderer was epileptic; but this is the kind of crime committed by persons in the state of masked epilepsy. They are usually crimes of out-

rageous and brutal violence, committed against persons with whom the criminal was not at enmity, and to whom he may have been completely unknown.

The kind of insanity that is associated with crime with the next degree of frequency, is that known as paranoia, or systematized delusion. Persons who are afflicted with this malady are possessed by the belief that they are the subjects of a plot, intended to ruin them, to torture them, to afflict them in various ways. The malady is a distinct one, and, though it varies much in detail, and also in its associations, there is always at bottom this deluded belief in a plot against them. The most constant association with the belief in a plot, is a foggy confusion of thought, which renders the person affected incapable of clear thought on the subject of the plot, and leads him into all kinds of irrational, incoherent, and even inconsistent beliefs about it. The grave consequence of the delusion, and of the confusion of thought with respect to it, is that the sufferer is very apt to take desperate measures to counteract the plot, measures that often seem to the bystander to have little connection with the

belief in the plot, and not to be calculated to counteract it, even if it existed. Because, in their belief, A is plotting against them, they will assault not only A, but B, whom they do not associate with the plot. They are particularly apt to make attacks on persons in high places, in order that the notoriety they thereby achieve may "draw attention to the case." A considerable proportion, perhaps a majority, of the murderous attempts made upon kings, rulers, and persons of high position, are made by lunatics of this description.

Another definite kind of insanity—general paralysis of the insane—is responsible for a small number of crimes. Persons affected by this malady are apt to believe that they are persons of great possessions—that they have unlimited command of money, and that they own all kinds of property, some of which exists in their imagination only, but some may be the property of other people. Considering the nature of their delusions, it is rather surprising that the offences they commit are so few; but every now and then a general paralytic is given into custody for appropriating some article to which he be-

lieved he had a valid title. Usually, together with the delusion, there goes impatience and irritability because his claims are not recognized; and this impatience and irritability extend to other matters, so that patients thus affected are apt to commit assaults; and the offences they commit are, in fact, more often of the nature of assault than of misappropriation; but the assaults are seldom serious, and by the time the patient is sufficiently disordered in mind to commit offences in consequence of his disorder, the disorder is so manifest, that he is placed under care, and no medico-legal difficulty arises.

One other matter must be treated of in this connection. We often hear of persons being afflicted with "homicidal mania"; and those who use the term, and those who hear it used, appear to think that this title indicates a definite form of insanity, characterized by a craving to take human life, and that the persons thus affected are for ever on the watch to commit murderous assaults on all and sundry. Such a malady is unknown to those who have the care of the insane, and are most intimately acquainted with

their peculiarities. Some paranoiacs may be termed, in a modified sense of the words, homicidal maniacs, since the exasperation produced in them, by the belief in a plot against their welfare, renders them prone to retaliate, even to the point of murder, upon any person whom they believe to be concerned in the plot; but even in them the inclination to homicide is only occasional, partial, and temporary. For the greater part of the time, towards most people, and except when lashed into fury by the contemplation of their undeserved sufferings, they are harmless enough.

Lastly, deep melancholy is a form of insanity that frequently contributes to crime. Persons afflicted with this distressing malady are possessed of the enduring and unalterable belief in their own wickedness, incompetence, incapacity, or poverty; and often also of a belief in the terrible future that lies before them and those who are dear to them. It seems *a priori* unlikely that such beliefs should lead to criminal acts, but in fact they very often do. The most frequent criminal consequence of melancholy is suicide; and suicide is technically a crime. But suicide

is far from being the only criminal consequence of melancholy. Often, the delusion of the melancholic is that some terrible calamity is impending over himself and those who are near and dear to him; and to save them from this calamity, he takes their lives. Never a year, and seldom a court of assize, passes without some unhappy prisoner being tried for the murder of a child, or, more usually, of several children, whom he has killed to save them from the death by starvation that he saw impending over them. Such multiple murders are usually committed by the father, but not seldom by the mother. More rarely, melancholy prompts to murder, or attempt to murder, from a more indirect motive. Hadfield, who fired a pistol at George III, attempted the murder of his sovereign from a motive curiously indirect. Hadfield was possessed with the delusion that his own wickedness was so extreme and portentous that it would produce the eternal damnation of the whole human race. To avert this stupendous calamity, he felt that he ought to die, but he was too conscientious to die by his own hand. Suicide is a sin; and by committing suicide he would be only

aggravating the burden of his wickedness. He resolved, therefore, to do an act which would bring about his death at the hands of others. For this purpose he shot at the king.

CHAPTER III

KINDS OF CRIME

FEW things are so difficult as crimes to classify satisfactorily. The first step in making a classification is to determine the purpose for which it is required; for a classification that is satisfactory and suitable for one purpose may be very unsatisfactory and unsuitable for another. A classification of men into rich and poor may be very useful to the assessor of supertax, but it is not of much value to the anthropologist. What, then, is the purpose for which a classification of offences is required? It is not very easy to say, precisely. It is important to the State, and interesting to its citizens, to know the number of crimes that are committed annually; but a mere sum total of all offences, lumped together, is of very little value. If we have such a sum total placed before us, we naturally

desire to have it divided up into the different sorts of offences; for it gives us no indication of whether the offences are grave, or merely nominal; signify deep moral depravity, or conscientious scruples; mean that society is being seriously assailed, or may sleep in security. We want to know more than the total number of offences committed; we want to know what kinds of offences are committed, and in what proportions. But the moment we begin to classify them we find ourselves in serious difficulties. Of course, the aim of every classification is to class like with like, and to separate unlike from unlike. The difficulty is that so many factors or elements enter into the composition of crime, that any classification that groups together those that are alike in any important respect, will separate those that are alike in some other important respect.

The official classification of crimes devised in the Home Office, and adopted by the prison authorities, divides them primarily into those which are triable at assizes and quarter sessions, and those which are disposed of in courts of summary jurisdiction. Such a division, while roughly indicating the relative

gravity of the offences in the two classes, is of little value for any other purpose, for it is, in many cases, at the option of the prisoner whether his case shall be disposed of in the inferior court, or whether he shall be committed for trial.

Those graver offences that are triable on indictment are divided, in the official classification, into six classes, as follows :—

I. Offences against the Person.
II. Offences against Property with Violence.
III. Offences against Property without Violence.
IV. Malicious Injuries to Property.
V. Forgery and Offences against the Currency.
VI. Other Offences.

No doubt this classification serves some purpose, or it would not be in use; but, apart from the miscellaneous class, which of itself shows the absence of an adequate principle of classification, a mere inspection of the outline given above is enough to show grave imperfection. Offences against property with violence are separated from malicious injuries

to property; but it is hard to see that malicious injury to property is not an offence against property, or that it can always be inflicted without violence. We may, indeed, set a house on fire, or destroy cattle or vegetation by the use of chemicals; but maiming cattle, destroying ships and railways, and the malicious use of explosives, seem to imply necessarily the use of violence. It is difficult to understand why forgery should be taken out of the class of offences against property without violence, and should be associated, in a separate class, with coining and uttering counterfeit coin. Forgery, coining, and uttering of counterfeit coin, are all of them offences against property, in the sense that falsifying accounts and larceny are offences against property. All are crimes of dishonesty; and forgery seems more connate to fraud by falsifying accounts, and to embezzlement, than to coining.

When we look into the details of the classification we find more anomalies. The detailed classification is as follows :—

CLASS I.—Offences against the Person.

Murder.
Attempt to murder.
Threats or conspiracy to murder.
Manslaughter.
Felonious wounding.
Endangering railway passengers.
Endangering life at sea.
Malicious wounding (misdemeanours).
Assault.
Intimidation and molestation.
Cruelty to children.
Abandoning children under two years.
Child stealing.
Procuring abortion.
Concealment of birth.
Unnatural offences.
Attempts to commit unnatural offences.
Indecency with males.
Rape.
Indecent assaults on females.
Defilement of girls under 13.
Defilement of girls under 16.
Incest.
Procuration.
Abduction.
Bigamy.

CLASS II.—Offences against Property with Violence.

Sacrilege.
Burglary.
Housebreaking.
Shopbreaking.
Attempts to break into houses, shops, etc.
Entering with intent to commit felony
Possession of housebreaking tools, etc.
Robbery.
Extortion by threats to accuse.
Extortion by other threats.

CLASS III.—Offences against Property without Violence.

Larceny of horses and cattle.
Larceny from the person.
Larceny in house.
Larceny by servant.
Embezzlement.
Larceny of post letters.
Other aggravated larcencies.
Simple larceny and minor larcenies.
Obtaining by false pretences.
Frauds by agents, etc.
Falsifying accounts.
Other frauds

Receiving stolen goods
Offences in bankruptcy

CLASS IV.—Malicious Injuries to Property.

Arson.
Setting fire to crops, etc.
Killing and maiming cattle.
Malicious use, etc., of explosives.
Destroying ships.
Destroying railways.
Destroying trees and shrubs.
Other malicious injuries.

CLASS V.—Forgery and Offences against the Currency.

Forgery and uttering (felony).
Forgery (misdemeanour).
Coining.
Uttering counterfeit coin.

CLASS VI.—Other Offences not included in the previous classes.

Offences against the State and Public Order—
High treason.
Treason felony
Riot

Unlawful assembly.
Other offences.

Offences against Public Justice—
Extortion by officers, etc.
Bribery, etc.
Perjury.
Escape and rescue.
Other offences.

Offences against religion—
Blasphemy, etc.

Offences against the Law of Nations—
Piracy.
Slave trade.

Libel.
Poaching.
Indecent exposure.
Keeping disorderly houses.
Other nuisances.
Habitual drunkenness.
Suicide (attempting to commit).
Other misdemeanours.

It will be seen that this arrangement leads to strange collocations and separations. Murder, bigamy, concealment of birth, and abduction are all in the same class. Piracy is associated with libel; high treason with

habitual drunkenness; perjury with poaching; riot with brothel keeping; and so on. On the other hand, threats to murder are in one class, and threats, whether to murder or not, for the purpose of extortion, are in another; indecent exposure is in one class, and indecent assault is in another; fraud is in one class, and forgery in another; wounding is in one class, and robbery with violence is in another. Destroying railways is in one class, and endangering railway passengers is in another; brothel keeping is in one class, and procuration is in another. As has been said, the nature of a classification must depend on the purpose for which it is required; but it is difficult to imagine any purpose for which such collocations and separations as these would be useful.

A very cursory examination of the classification reveals the reason of its failure. The classes of the same rank are not founded on any one principle. The first three classes, and part of the fifth, are made according to the object—person, property, etc.—against which the offence is directed; the fourth class is characterized by the motive on which the offence is committed; and the sixth class is

an *omnium gatherum*, founded on no principle at all. If a classification is to be valid, it is necessary that all the primary classes shall be constituted on a single principle; and the difficulty of classifying crimes is that so many factors enter into the constitution of a crime, that the choice is large; and the importance of these several factors is, from different points of view, so nearly equal, that the difficulty of choice is great.

There are, in a crime, no fewer than five main factors, any one of which may be used as the basis of a classification of crimes.

1. We may classify crimes, as the official classification purports to classify them, according to the nature of the injury inflicted by the act; that is, according to whether the criminal act is injurious to the person, or damaging to property, or is a misappropriation of property, or is an invasion of chastity, and so forth. But the defects of such a principle are transparent, and some of them have already been indicated. A homicidal assault is an offence against the person; an attempt to violate chastity is an offence against the person; and the two are included together in the first official class. But the differences between

them are so great and so numerous that it is felt to be anomalous to class them together. A violent assault is an offence against the person; stealing is an offence against property; but how are we to classify, on this scheme, robbery with violence? The official scheme calls it an offence against property; but the victim might consider his broken head a greater injury than the loss of his watch; and there is as good reason for classing it as an offence against the person, as for classing it among offences against property. Injury to property and misappropriation of property are both of them "offences against property," but when a burglar steals an artistic silver model and melts it down, under which head are we to class the offence? According to this principle, murder is a single offence, and in English law there is but one crime of murder; though in the laws of some other countries there are two kinds of murder—murder in the first degree and murder in the second degree. But if we wish to get at the springs and sources of crime, and to view it in relation to its causes, there are many kinds of murder, distinguished by the motives from which it may be committed. It may be committed

for gain, or for lust, or for revenge, or to secure the safety of the murderer, or unintentionally, in the course of committing some other felony, or to escape from an unhappy marriage, or for the good of the victim, or from some other motive; and although, for the purpose of administering justice, it may be expedient to class all these together, yet, for the purpose of understanding the causes of crime, such a classification would be confusing and worthless. The man who would commit murder from revenge or malice might be as far from committing murder for gain as the most thoroughly moral and law-abiding citizen.

2. Yet if we take motive for the primary basis of our classification, we may fall into anomalies equally grave. We shall then, not only divide murders into several different classes, but we shall group together larceny and piracy, coining and poaching, picking pockets and forgery, burglary and offences against the Truck Acts, brothel keeping and driving a lame horse.

3. One of the most important aspects of crime that must be considered, is the degree of turpitude that is involved in it. It is this that mainly determines the reprobation with

which we regard the offence, and the punishment that is awarded. The turpitude of the offence is the primary basis of the official classification into offences triable at assizes and quarter sessions, and those which are dealt with in courts of summary jurisdiction. But turpitude is a matter of degree, admitting of no sharp distinctions, difficult to assess, and assessed very differently by different persons. We have seen lately an attempt to class infanticide among venial offences, to be punished, if at all, with trifling severity; yet it is officially regarded as one of the gravest offences known to the law. If we proceed on this principle, we may class together poaching and betting, assault and setting fire to a common, blackmail and attempting to wreck a train, bigamy and riot, and other incongruous couples. We shall separate different examples of the same offence, committed from the same motive, according to the amount of temptation offered; and we must form a special and extremely miscellaneous class of offences that imply no moral turpitude at all. Plainly, a classification on this principle is impracticable.

4. Or we might base our classification of

offences on the consideration of the object that the offence is intended to benefit. Is it committed for the benefit of the offender himself, of his family, of some other person, of the State at large, or of the race ?—for offences may be committed with any of these objects. It is clear, without giving instances, that the application of this principle would result in a hodge-podge of miscellaneous offences being collected together in each class, and in the same offence appearing again and again in different classes.

5. Lastly, we may take the object injured by the offence as the basis of our classification, and divide offences into offences against the State, offences against individuals, offences against the institution of marriage, offences against chastity, offences against religion, and so forth; and in this principle, which is utilized to a small extent, for some of its minor classes, by the official classification, we shall find the most secure basis for a natural and scientific arrangement of offences. This principle, which we shall find answers admirably as a basis for the constitution of the main groups of offences, will not suffice, however, for the minor divisions, and for them

it must be supplemented by utilizing some of the other factors herein set forth.

From this examination of the various factors in crime, it appears that no satisfactory classification can be made on any one of these principles alone, yet that each is important; and that no classification can be satisfactory that does not take them all into account, to some extent, and at some stage. The difficulty is to decide in what order to take them, on what principle to make the primary division, and what precedence is to be given to the others in making the subsequent groups.

After very careful consideration I suggest the following classification as that which satisfies the conditions with the nearest practicable approach to completeness.

Every offence is an offence against society. It is an offence because it is directly or indirectly injurious to society; and society, for its own protection and preservation, must prevent or punish it. So regarded, offences may be primarily divided into those against which all or several civilized states take common action, and those which are punished by individual states, each acting within its own jurisdiction. Thus we arrive at a primary

division of offences into international and national.

International offences are few, and nowadays are rare. They include piracy, filibustering, and the slave trade; to which it seems likely, and would be proper, that anarchy should be added. Offenders of this class are the enemies, not of this or that individual, or even of this or that particular State. They are *hostes humani generis*—enemies of humanity and civilization at large; and, as they are the common foes of all nations, all nations are interested in exterminating them.

Of national offences, some strike at the fabric itself of society, tending to break it up and destroy it, by direct or indirect means; others injure society in detail, by attacking its individual members, breaking up families, or interfering with the replenishment of society by the production of children. We may therefore divide National Offences into Public Offences and Private Offences, and subdivide Public Offences into the Direct and the Indirect, and thus lay the foundation of our classification, as follows :—

I. International Offences.

II. National Offences: Acts injurious to Society;

A. Generally: Public Offences.
Direct, by attacking the primary functions of the State.
Indirect, by attacking the binding forces of Society.

B. In detail: Private Offences.

Public Offences are those which injure the State, or society at large, either directly, by impairing its proper functions, or indirectly, by loosening the binding forces of religion and custom, which help so powerfully to hold society together. To discover the character of Direct Public Offences, which injure the State by impairing its proper functions, we must determine what these functions are.

The functions of the State are primary and secondary, or major and minor. Its major or primary functions are to defend itself from external foes, and to preserve its internal integrity. For the first purpose, it maintains its Foreign Office, its Diplomatic Service, its Army and Navy. Unless this function is efficiently performed, the State must perish by assault from without. The internal in-

tegrity of the State is preserved by keeping the Peace; and for this purpose it provides, not only officers whose duty it is to prevent and stop breaches of the Peace; officers to try offenders and punish offences; and a machinery for the prevention of crime; but also a system of administering justice between citizen and citizen, which supersedes private conflict, and provides, in its stead, a peaceful method of settling disputes. For both of these primary functions it is necessary that the State should have a revenue, wherewith to pay its officers and provide the necessary buildings and appliances. Any act, by any of its citizens, which impairs either of these primary functions of the State, is directly injurious to it, and constitutes a grave public offence. Moreover, the officers of the State are in a position of peculiar power and responsibility, having the whole authority of the State behind them; and they are under a considerable temptation to abuse this authority for their own private advantage. Such an abuse of official position is a grave injury to the State; and where it prevails extensively, is a source of weakness to the State which may easily lead, and in many cases

has led, to revolution within, to conquest from without, or to foreign interference which differs only nominally from conquest.

Thus we obtain the following classes:—

Direct Public Offences, Grave—

- Offences against the State as a whole. and against its external defences.
- Offences against the Peace.
- Offences against the Administration of Justice.
- Offences against the Revenue.
- Offences against Officers of the State as such.
- Abuse of official position by Officers of the State.

Although these are the primary and main functions of the State, functions that are necessary to its preservation, they are not its only functions. Modern States assume various minor functions, which are not necessary to the preservation of the State, but are desirable, either for the convenience of the citizens at large; or for the protection of its weaker members; or to minimize risks of injury; or in other ways to serve the public welfare. The public convenience is served

by the creation of State monopolies—the minting of coin, the Post Office, the telegraph and telephone services—to which some countries add railways, pawnbroking, and other monopolies. For the protection of its weaker members, the State provides the Poor Law, the Lunacy Law, Factory Acts, Truck Acts, Betting Acts, Gaming Acts, and many other enactments. To minimize risks of injury, innumerable statutes contribute; from Public Health Acts to Protection of Machinery Acts, Mining Acts, Merchant Shipping Acts, Motor Vehicles Acts, and so forth. Provision is made to increase the general welfare of the citizens by Education Acts, Building Acts, Town Planning Acts, and so forth.

Infringements of any of these laws are, in a technical sense, offences against the State. Prosecutions for such infringements are undertaken by the officers of the State, and are not left to private initiative. They are undertaken by public officers and on public grounds. But it is evident that these are public offences in a sense very different from that in which the Grave Public Offences are so understood. Infringements of these laws do not impair

the integrity of the State, or bring it into danger. The State existed and flourished for centuries before these laws were enacted, and if they were all repealed to-morrow, the State could get along very well without them. They are not vital to its existence. Acts by which these laws are infringed constitute a separate class of Minor Public Offences which may be thus divided:—

Direct Public Offences, Minor—
- Offences against State Monopolies.
- Offences against the Benevolent Laws.
- Offences against the Protective Laws.
- Offences against the Salutary Laws.

Within the State are various minor authorities, each administering a certain area; and as it must happen that local conditions produce special opportunities and special occasions of danger and inconvenience, these minor authorities, or municipalities, have certain limited powers of legislation delegated to them by the State, to regulate the conduct of citizens in these local respects and matters. Not only to public municipal bodies, but also to great private corporations, the State gives power to make by-laws for the regulation of

the conduct of those members of the public whom the corporations serve; and infringements of the by-laws of railway companies, dock and harbour authorities, river conservancy boards, and so forth, constitute, with infringements of municipal regulations, a distinct class of Minor Public Offences, viz.:—

Offences against Municipal Regulations and By-Laws.

Grave Public Offences directly endanger society. Minor Public Offences, and Municipal Offences, do not endanger society; but they militate against the convenience, the property, the welfare in some or other way, of its members. Society may, however, be endangered indirectly by acts which do not directly attack its fabric, its officers, or its revenue, but which weaken the binding forces which tend to maintain society as a cohesive aggregate, and to keep it from dispersion. It would take up too much space to show here how religion and custom act as binding forces in this sense; and I have dealt with the question elsewhere at length (*Conduct and Its Disorders*, Macmillan).

Here it must suffice to say that there is, in man, a natural repugnance to any attack on his religious belief, or his customary observance; that this repugnance is founded on the fact that such attacks are injurious to society; that they are felt to be of the nature of offences against public order; and they are consequently punished. As other influences grow in potency and take their place, the social importance of religion and custom decline; and they are no longer safeguarded by State punishments against innovation; but in all primitive societies, they are so punished; with us they have only recently ceased to be so punished; and one form of attack upon religion—blasphemy—is still a penal offence in this country.

The second class of National Offences consists of those acts by which society is injured, not in the gross, by interfering with its functions, but in detail, by attacks on individual persons or institutions within the State. These constitute the large class of Private Offences.

The complex social state in which civilized communities exist, is a very late product of the evolutionary process. The social state

itself is comparatively a late product, a late stage of life and development. Being of comparatively recent origin, the social instincts innate in man are not yet developed in complete harmony with the remaining instincts. Other instincts, in some respects and at some times antagonistic to the social, are of greater antiquity and of greater potency. In order to maintain the social state in spite of these antagonistic instincts, social communities of mankind have devised systems of law, as a protection against those who give way to these instincts. We have seen that the three groups of vital instincts are the Self-preservative, the Family and Racial, and the Social. Since Private Offences arise from the preponderance of one of the two former over the latter, we may divide them accordingly, and so obtain the two great classes.

Offences of the first class are prompted by some instinct of the self-preservative class. They are acts injurious to others, done for the benefit of the actor in his struggle for life; or from some self-preservative motive. They are acts by which he seeks his own greater safety, welfare, or satisfaction, by injuring his fellows. They are acts prompted by the desire for

personal security, by the desire for gain, or by malice.

Offences of the second class arise in the course of family and racial conduct.

Private Offences of the self-advantageous class may be classified in either of two ways. They may be divided according to the nature of the damage inflicted, or according to the motive with which the damage is done. On the first plan, the classes would be :—

Offences against life and safety.
Offences against liberty.
Offences against property.
Offences against reputation and feelings.

On the second plan, the division would be into

Offences committed for personal safety.
Offences for gain.
Offences for the gratification of malice.

Or the two principles may be combined, the one being used for the main division, the other for subdivision, thus :—

Private Offences—
Self-advantageous.

Offences committed for personal safety.
Against the person.
Against property.
Offences committed for the gratification of malice.
Against the person.
Against liberty.
Against property.
Against reputation.
Offences committed for gain.
Misappropriation of property.

The second class of private offences consists of those which arise out of family and racial conduct. They are acts which arise out of the relation of sex and parenthood, which are done for the gratification of the actor, and which are injurious either to individuals, or to the institution of marriage, or to the rising generation, or to the principle of racial reproduction. Accordingly they may be divided as follows :—

Private Offences—
Family and Racial.
Offences against individuals.
Offences against the family.
Offences against the race.

The first class consists mainly of offences prompted by jealousy; the second of offences against chastity and the marriage tie; the third of injury inflicted on the coming generation.

CHAPTER IV

PUBLIC OFFENCES

THE consideration of International Offences need not detain us. Piracy is confined to rare occasions in remote seas; filibustering was thought, until the occurrence of the Jameson raid, to be extinct; the slave trade still requires a few small ships for its prevention and suppression, but the offenders are never tried in English courts; and anarchism is not yet elevated to the rank of an international offence.

Public Offences we have divided into the direct and the indirect; the former attacking the fabric of society by impairing its functions, the latter by loosening the binding forces of religion and custom, which, until the social instincts become sufficiently developed to do without their aid, act powerfully in main-

taining the integrity of the commonwealth. We divided the Direct Public Offences into Major and Minor; and it is necessary now to consider each of these in more detail. It will be remembered that the Grave Public Offences are as follows :—

1. Offences against the State as a whole, and its external defences.
2. Offences against the Peace.
3. Offences against the Administration of Justice.
4. Offences against the Revenue.
5. Offences against Officers of the State as such.
6. Abuse of official position by Officers of the State.

1. The first group of Public Offences consists of those acts that impair the defences of the State against its foreign foes, actual or potential. They include that variety of treason known as aiding the king's enemies; prying and spying into the defences of the State, and into diplomatic secrets; revelation of official secrets; mutiny, and offences against the Army and Navy Acts; and damage to war material or ships, to which may be added

damage to any of the property of the State. Under mutiny may be included, not only insubordination in the naval and military services, but incitement to discontent, and subornation of soldiers or sailors to neglect or violate their duty; offences rare in this country, but a source of anxiety to some of our neighbours. Insanity does not often contribute to offences of this class; but I have had under my care as a certified lunatic, a young soldier who slapped his officer's face on parade, and could not be made to understand that he had done anything unseemly or objectionable.

2. Offences against the Peace. As the primary external function of the State is to defend itself against external foes, so its primary internal function is to keep the Peace within its borders. A State distracted by internecine strife is in course of dissolution; and the prevalence of internal strife is fatal to the existence of the State. The most important, the earliest, the primary internal function of the State, is to substitute the orderly arbitrament of law for the disorderly arbitrament of private war, in the settlement of disputes between its citizens. The first duty

of the State is to suppress internecine strife; for any occasion of such strife is the beginning of a process which, if continued unchecked, would end in the dissolution of society, and its return to barbarism and savagery. Hence it is of prime importance to suppress offences against the Peace, whether they assume the menacing form of armed rebellion, or whether they take the less important shape of riot, or unlawful assembly in numbers, or whether they are mere affrays between individuals. This is the principle on which duelling is forbidden. If two silly persons choose to aim at each other's lives, under conditions fair to both, it would seem that it is of no concern to any one but themselves; but the State rightly recognizes that if such conduct were to become general, society would lapse into barbarism; and duelling is forbidden, and the duellist punished, in order that the Peace may be kept. So important to the integrity of the State is the keeping of the Peace, that not only is it an offence to break the Peace, or to incite to breach of it, but any act calculated to lead to a breach of the Peace is *ipso facto* an offence to be punished.

Insanity weakens the self-control of those

who are affected by it, removes the qualities latest acquired, and reduces the insane to a more primitive state of being—to a state nearer that of the barbarian and the savage. Hence, insanity is a frequent contributory to breaches of the Peace. It does not prompt to actual rebellion, or even to riot, for the insane have no power of combination; but it frequently leads to affrays and assaults.

3. Offences against the Administration of Justice are manifestly Grave Public Offences. It is by the machinery of Justice that private war is rendered unnecessary and superseded, as well as punished; and any interference with the administration of Justice strikes at the foundation of the State. The Administration of Justice includes the arrest, trial and punishment of offenders; the prevention of crime, and the settlement of disputes between citizen and citizen; and any interference with any of these functions constitutes an offence. It is an offence to hinder the arrest of an offender. More than this, every citizen is bound by his duty to the State, not merely to abstain from hindering, but actively to assist in securing the arrest of an offender; and failure to assist, when called upon by competent authority to

do so, is itself a punishable offence. So, after an offender has been arrested, it is a punishable offence to contrive or assist his rescue from custody.

Every citizen owes a duty to the State, not only to assist in the arrest of an offender, but to give evidence on his trial; and wilfully to absent oneself, after due summons to give evidence, is a punishable offence. Nor does the obligation to justice end here. When the witness is in court, he is sworn to tell the truth, the whole truth, and nothing but the truth; and if he violates his oath in any of these respects, he is punishable. Not merely is he punishable for perjury, that is, for swearing to that which he knows to be false; he is punishable also if he refuses to answer a question that the court directs him to answer. He is sworn to tell, not only the truth, but the whole truth. If it is an offence to give false evidence, or to refrain from giving evidence, or to destroy or falsify material evidence, still more is it an offence to induce another witness to err in either way; and hence intimidation, bribery, and subornation of witnesses are Grave Public Offences. Still graver is the offence of attempting to bribe, or unduly to influence, judge or juror.

The arrest and trial of offenders is but one branch of the Administration of Justice. After sentence, the offender must undergo his punishment, neither less nor more than the Court awards. It is an offence, therefore, to contrive or assist the escape of a prisoner from custody. It is an offence to suborn his custodian to mitigate his punishment, part of which is his seclusion from communication with his fellows. It is an offence, therefore, to communicate with the prisoner, except under the conditions allowed by the penal authorities; or to convey to him anything that he is not permitted to possess. Not only is it an offence to mitigate the punishment awarded to an offender by the Court: it is an offence also to increase that punishment. Hence any breach of prison regulations, in the direction of increasing the discomfort of the prisoner, is punishable.

Understood in a wide sense, the Administration of Justice includes not only the arrest, trial, and punishment of offenders, but also the prevention of crime; and to this end a considerable body of law is directed. Thus under the heading of Grave Public Offences are included violations of the Prevention of

Crimes Acts, of certain provisions of the Pawnbrokers' and other Acts.

If the prevention of crime is a function of the State, interference with which is a Grave Public Offence, the actual instigation of crime is *a fortiori* a Grave Public Offence. Instigation to crime by a private person is heinous; but it is exceeded in turpitude when the instigation is made by an officer specially employed by the State to prevent crime and arrest offenders. For the *agent provocateur* there is no title in the vernacular, and the absence of the name points to the rarity of the thing to which the name applies; but that other countries are less fortunate, the existence of the name in other languages seems to signify.

Another function to be considered under the head of the Administration of Justice, is the legal settlement of disputes between private citizens; and in this matter also, every citizen is bound by law to give what help he can. If he is summoned as a juror, he must attend, under pain of punishment for his absence. If he is summoned as a witness, he is under the same obligation as a witness in a criminal case. He must abstain from any interference

with the course of justice. If even he expresses an opinion in public as to the merits of the case, or the claim of one or other party to succeed, he commits a Grave Public Offence, and is punishable for contempt of court.

Lastly, the Administration of Justice is interfered with if persons, who are not authorized to do so, pretend to be officers of justice and to exercise their functions. Hence it is an offence for a person who is not a solicitor to pretend to be one, or for a person who is not a constable to pretend to act in that capacity. Personation of other officers of State is rare.

Insanity rarely enters into offences against the Administration of Justice.

4. Offences against the Revenue. This is a small but important class of Grave Public Offences. It includes smuggling, evasions of excise and of other modes of taxation; either by making false returns of liability or in other ways. They are crimes committed for gain, and of such offences insanity is rarely a component.

5. Offences against Officers of the State, as such, comprehend very diverse offences, of many degrees of magnitude. The gravest

of these is treason-felony—attempt against the life of the Sovereign, who is the chief officer of the State—but offences of this class are by no means confined to offences against the Sovereign, or to offences against life. The assassination of Mr. Spencer Perceval, who, as prime minister, was the working sovereign for the time being, is an instance of a conspicuous kind; and the daily assaults upon the police in the execution of their duty are less conspicuous instances of the same class of offence. We have recently witnessed many assaults by women upon members of the Cabinet and high officers of State, which may be balanced at the other end of the scale by assaults on prison warders. It is only when officers of the State are assaulted in their official capacity that the offence is a Public Offence of this class. When the Prime Minister, the Home Secretary, or the Irish Secretary is assaulted, as they all have been, because of some action, or want of action, in their official capacity; or when a policeman or a prison warder is assaulted in the course of his duty; the offence is a Public Offence; but when any of them are assaulted from private motives, or when off duty, the offence

is a Private Offence, and falls in another class.

Personal violence is not the only way in which offences may be committed against the officers of the State as such. Their property may be damaged, in revenge for some official act or omission to act. The Duke of Wellington, Mr. Gladstone, and other public officers have had their windows broken on this motive; and such damage is, properly speaking, in the class of Grave Public Offences, though, in view of the triviality of the damage done, it is not customary so to consider it.

A Public Offence which is grave, not only technically, in the sense that it is committed against an officer of the State as such, but in the more ordinary meaning of grave, that it is a serious injury to society, is that of bribing or intimidating, or attempting to bribe or intimidate, officers of the State, in order to influence them in the discharge of their duties. Bribery of the high officers of the State is now, in this country, happily unknown; but the case of Lord Bacon reminds us that it was not always unknown here, and it is still frequent in some other countries.

The graver offences of this class, such as

attempting the life of the Sovereign, or of some other of the principal officers of the State, are frequently, it may be said usually, the outcome of insanity, and usually of that variety of insanity called paranoia, and so described in a previous chapter. Henri IV was killed by a paranoiac. Fenton, who killed the Duke of Buckingham in the reign of Charles I, was a paranoiac. Bellingham, who shot Mr. Spencer Perceval, was a paranoiac. President Lincoln and President Carnot were killed by paranoiacs. Queen Victoria was twice shot at by paranoiacs. Sir George Jessel, the Master of the Rolls, was shot at while sitting in Court, by a paranoiac; and the list might be indefinitely extended. On the other hand, assaults on the inferior officers of the State are not often prompted by insanity. Whether the peculiarity of mind which has lately prompted so many assaults by so-called suffragettes and suffragists, upon high officers of the State, attains to the dimensions of insanity, is not proved.

6. The last sub-class of Grave Public Offences is abuse of their official position by the officers of the State. This is a rare offence in this country, and is confined to a few

officers of minor rank. We are happily exempt from the extortion and oppression by high officers of the State that are so rampant in some Eastern nations; and with a vigilant press ever on the watch for occasions for sensational articles, we are likely to remain so. There are rumours from time to time of the harrying of outcast women by police constables, but beyond this, no one in this country, not even a convict in prison, has reason to complain of oppression by persons in official positions. Other countries are less happy in this respect. The revelations of the abuse of official powers by the adherents of Tammany have shocked the civilized world; and the administration of some European nations is believed not to be immaculately pure.

Minor Public Offences

These we have found to be of five classes :—

1. Offences against State Monopolies.
2. Offences against the Benevolent Laws.
3. Offences against the Protective Laws.
4. Offences against the Salutary Laws.
5. Offences against Municipal and Corporate Regulations.

The only State monopolies in this country are the minting of coin, and the Post Office, including the telegraph service, and shortly to include the telephone service.

The limits of the legitimate action of the State, and of municipalities, in undertaking manufacturing and commercial transactions, have been the subject of much controversy; but the beneficial action of the State in undertaking and monopolizing the manufacture of coin, has scarcely been questioned. Curiously enough, the manufacture of bank-notes, which are documentary coins, does not stand on the same footing, at least in this country. Still, the intimate relations of the Bank of England, which has a monopoly of manufacturing English bank-notes, with the State, render the forgery of notes of the Bank of England an offence almost on a level with the making of counterfeit coin.

Offences against the coinage consist of clipping and sweating of genuine coin, and making and uttering of counterfeit coin. The first two offences are obsolete, having been rendered unprofitable by the improvement in modes of manufacture; but coining and uttering of false coin are still sufficiently

frequent, and offenders in this respect are convicted every year. It is curious that, while clipping and sweating of coin are become more difficult and less profitable, the manufacture of false coin is both easier and more profitable than it formerly was. It is easier because of the aid of electricity and other new methods; and it is more profitable because it is more difficult of detection. When silver coins were worth, as bullion, their face value, it was unprofitable to counterfeit them except in base metal, which was easy to detect; but now that silver coins are worth, as bullion, but a fraction of their face value, it is profitable to counterfeit them in sterling silver; and the detection is proportionately difficult.

Offences against the Post Office monopoly are, strictly speaking, confined to the infringement of the monopoly by the private delivery of letters. This is a rare offence, for the Post Office performs its duties so well, so promptly, so certainly, and so cheaply, that there is little inducement to infringe upon it. Stealing letters from the post is, in a sense, an offence against the Post Office; but it differs from Private Offences only in the fact that the

letter is for the time being in the custody of the State, and therefore scarcely comes within the description of even a Minor Public Offence. That it is, however, considered more than a Private Offence, is shown by the greater severity with which it is punished.

Lately, a new offence against the Post Office has been devised and used for the purpose of fraud. Bets made, after a race has been run, on the result of the race, are manifestly fraudulent. The evidence that the bet was offered before the result of the race was known, is often contained in the postmark on the letter containing the offer, or in the time entered upon the telegram, as the time of handing it in. By the aid of collusive post office officials, such postmarks and entries of time have been antedated, and thus the betting offer has been made to appear as if it was made some hours before it was in fact made, and the bookmaker has been defrauded thereby. Convictions have been obtained in several cases for fraud of this character; but the conviction has been for fraud, a Private Offence, and not for the Public Offence of falsifying the postmark or time record.

None of the offences of this class is contributed to by insanity.

2. Under the title of the Benevolent Laws, I have grouped together all those enactments that are made for the protection of the weak. By the weak I do not mean necessarily the muscularly weak, nor the mentally weak; but all those who are, for any reason, at the mercy of others—all those who are unable to protect themselves fully against the attempts of others to take advantage of them, whether the ability and temptation to take advantage arise from superiority in skill, in knowledge, in wealth, in ability to give employment, or from any other cause. As those who are relatively weak in any respect are unable to protect themselves fully, the State undertakes their protection; and advantage taken of their weakness becomes an offence against the State—a Minor Public Offence. This is the object of the enactments of the Poor Law; the Lunacy Law; the Factory Law; Truck Acts; Mines Acts; Employment of Children Acts; to which may be added the Money-lenders Act; Gaming and Betting Acts, and many others.

3. A large class of legislation consists of

those acts that provide for the minimization of risk of injury to persons, either by one another, or in other ways. These I have called the Protective Acts. They are closely akin to the Benevolent Acts, and provision for both purposes is often contained in the same enactment. Legislation for the protection of citizens from injury is embodied in Public Health Acts, Protection of Machinery Acts, Vaccination Acts, Motor Vehicles Acts, and many others; and the sentiment of tenderness towards suffering is now so developed, that it extends even to the lower animals, and so we have Cruelty to Animals Acts, Vivisection Acts, Wild Birds Protection Acts, and so forth, infringement of any of which is a punishable offence.

To offences of this class insanity furnishes but a small contingent.

4. The fourth class of Minor Public Offences consists of offences against what I have called, for want of a better title, Salutary Laws; by which I mean laws that provide for the positive increase of well-being among the citizens, and not merely for their protection from diminution of welfare by injury and wrong. We are not content, now-a-days, to limit the action

of the State to the protection of its citizens against harmful experiences. The State endeavours more than this. It strives to secure that the citizens shall not merely negatively suffer no harm, but shall positively be benefited. With this object, the State provides Education Acts, Town Planning Acts, and so forth; and municipalities, which in their way are minor States, provide parks and gardens, baths and wash-houses, and other amenities of life. Amongst other paternal functions, the State takes pains to secure to such of its citizens as can afford them, the enjoyment of certain amusements, that is to say, the pursuit and slaughter of game; and that they may enjoy these amusements undisturbed, and to the full, the State prohibits any person but the owner or occupier of the land on which the game is, or those who have his permission, from pursuing or slaughtering game. The Game Laws are amongst the oldest in the kingdom, and amongst the most severe; and this seems to be the most appropriate position in which to class them.

The only way in which insanity contributes to offences against these enactments is by

keeping children away from school. Some children of weak mind have not enough intelligence to find their way to school. For them, provision is usually made to take them there; but some are incurable truants, and in some cases the truancy depends on mental disorder. A patient of mine, who should attend a board school—a little boy of 8—will not go; but wanders about the street from morning till night, seeking out the statues, and gazing at them, and going all day without food, rather than submit to the sedentary life of school.

5. The offences of the last class of Minor Public Offences are minor in a double sense. They are minor as being of little turpitude and little importance, and they are minor as offences against minor authorities, not against the State itself. They are offences against the regulations of municipal bodies, and against those of the police and of the great private corporations, such as railways, harbour boards, river conservancy boards, and so forth. Evasions of the rates, breaches of park regulations, of cab and carriage regulations, of railway by-laws, and so forth, constitute the offences of this class; to which insanity does not specially contribute.

Minor Public Offences are marked as Public Offences by the fact that offenders who commit them are prosecuted by the officers of the State or of the public body concerned, and that the prosecution is not left to private persons. The reasons are several. In many cases, the injury done, whether actual or potential only, is distributed over many persons, who may, if the injury is but potential, remain in ignorance that they were ever threatened, and consequently would never take steps to prosecute. Persons whose lives are threatened by unprotected machinery, or by breach of a mining law, may be ignorant of the danger they incur; if they know it, they may be indifferent to it; and if they know and dread it, they may dread still more the loss of employment that a prosecution would entail upon them; and they may be unable to incur the expense. Sufferers from offences against the Protective Laws are manifestly not in a position to prosecute offenders; for it is their very weakness and inability to protect themselves that have led to the enactment of the Lunacy Laws, the Employment of Children Laws, and other enactments of the same class. And offences

against the Education Acts are committed by the very persons who suffer from the offence, and who can scarcely be expected to prosecute themselves.

Indirect Public Offences

These are offences against religion and custom, and are now, for the most part, in this country, obsolete; though blasphemy is still a criminal offence. There was a time, however, when they were regarded very seriously. Offences against religion were punished with merciless severity; and not only is the whole of the Common Law and the Land Law founded upon custom, but the older statute books are crowded with sumptuary laws for the maintenance of particular customs.

In these days of widespread freedom of thought, and of widespread indifference to religious dogma, it is a little difficult to realize and to understand the intense fervour with which religious differences were in former times punished, and the rancour with which heresy and heretics were persecuted

and exterminated. Nor shall we be enabled to understand either the old point of view, or the change that has taken place in the estimation of heresy, unless we take into consideration the social value of religion, and the immense influence that it has exerted in welding individuals into coherent and harmonious communities. As I have explained in other places, the first condition necessary to the social state is uniformity of action on the part of the individual components of the community. If, of a herd of deer, which is a very primitive community, some of the members stand still, or lie down, while others bound away, the herd will be disintegrated. Even if all move, the herd will still be disintegrated, unless all move at the same rate, and in the same direction. If some go north and others go south; if some gallop and others walk; the herd will be dissipated, and will be a herd no longer. This necessary uniformity of action implies, as a condition, a uniformity of mind. If, by a novel appearance, some of the deer are stimulated by curiosity to go up and examine it, while others are stimulated by fear to flee from it, the herd will be disintegrated. And if, by

a novel religious doctrine, some members of a human community are stimulated to embrace it, while others are stimulated to repudiate it, the community will suffer an incipient disintegration, which easily becomes actual, as we see in the historical migrations that have taken place from religious incompatibility; as in the case of the Exodus; of the immigration of French Huguenots into this country; of the exile of the Pilgrim Fathers; of the expulsion of the Jews from England, and of the Moors from Spain. The whole course of history is one long testimony to the binding force of similarity in religion, and the disintegrating influence of religious differences. We see even now, how, in this age and in this country, in which the importance of religion in this respect is much diminished by the growth of other integrating forces, persons of the same religion tend to intermarry; to prefer each other in business, in preference to outsiders; and to seek proximity in residence. It is common in advertisements of houses, to see it stated that they are near such a church. It is the dim and unformulated perception that religious differences exert a disintegrating influence on society,

while religious uniformity is a powerful integrating agent, that prompts the bitter resentment that is felt against the introduction of religious difference. It is felt to be a species of treason, and as treason it is resented, and its perpetrators punished and exterminated. Nonconformity in religion is no longer regarded as a crime, it is true; but this toleration is a thing of yesterday; and is even now not complete in all nations, nor in all respects even in this nation. Throughout the history of the world it has, until very recently, been regarded as a crime, and no general review of crime would be complete from which it is excluded.

The second of the Indirect Public Offences is violation of customary use; and such violation is an offence for the same reason, and in the same sense, that innovation in religion is an offence—because, by breaking the uniformity of action, it tends to the disintegration of society. No society can hold together without the binding force of law; and all bodies of law owe their origin ultimately to custom. In primitive communities, custom is paramount; and the despotism of the king or the priest is really but the despotism

of custom, of which the king or the priest is the exponent. His despotism endures only as long and as far as it is in conformity with custom; and if, in some cases, as those of Peter the Great and Henry VIII, he appears to impose his will in defiance of custom, it is because the customs he violates have become obsolescent, and the minds of his subjects are already ripe for a change. And when the change is made, it is not the abolition of custom, but the substitution of one custom for another. As in the case of religious innovation, violation of custom is no longer a crime with us, for other binding influences have rendered this so far unnecessary, that it may be violated without serious disintegration of the social state; but in more primitive communities, in all barbarous communities, violation of custom is a crime of the nature of treason, and visited by like penalties; and even with us, violation of custom is looked upon askance, and regarded with disapproval, and even with hostility.

It is a little difficult to determine the ground on which suicide is now regarded as a criminal offence. In origin, the offence was not civil,

but ecclesiastical. The suicide was condemned by the church for depriving himself of that life which had been given to him by his Maker, to be used to the glory of his Maker. Civilly, the suicide is to blame if and when, by his suicide, he evades obligations to others; but in cases in which there are no such obligations, it would seem that the only ground on which suicide can be condemned, is that it is a direct injury to the community by depriving it of one of its components. Whether the presence in the community of a person whose circumstances are such, or whose mental attitude is such, that he contemplates suicide, is a source of strength or of weakness to the community, is arguable; and does not seem so certainly determinable in the former sense, as to justify any very serious attempt, on the ground of the welfare of society, to prevent him, or to deter others, from accomplishing this purpose. In as far as attempt at suicide is regarded as a criminal, and not as an ecclesiastical, offence, it can scarcely rest on other ground than the direct injury that it inflicts on society, by depriving it of one of its members; and the infliction of direct injury on society at large is a Grave

Public Offence; but, although it is still nominally a felony, in practice, attempts at suicide are not regarded or punished as crimes; and it seems scarcely worth while to include them in a scheme of offences.

CHAPTER V

PRIVATE OFFENCES OF THE SELF-ADVANTAGEOUS CLASS

I. *Offences committed to Gratify Malice and for Personal Security*

We now leave the department of Public Offences, and enter on the consideration of Private Offences; and these, we have seen, are divided into two large classes: those which arise in the Self-preservative department of conduct, and are efforts towards safety, gain, or the gratification of malice; and those which arise in the Family and Racial range of conduct.

The first class we consider are offences committed for personal advantage, and of these we take first those that are committed for the sake of personal safety, and for the gratification of malice. In the next chapter

we will consider those that are committed for the sake of gain.

Self-preservative conduct falls naturally into two departments—that which preserves us from physical dangers and from the assaults of our enemies; and that more elaborate and continuous conduct by which we earn our livelihood and administer our means. There is, therefore, good scientific reason for considering together the offences committed for the sake of safety and to gratify malice, and for separating them from those that are committed for gain.

Among the physical dangers that beset primitive man, the chief are those that arise from the aggression of his fellows. Primitive man lives in constant warfare; and even in relatively advanced communities, and in historic times, property is held on the good old rule, the simple plan, that he should take who hath the power, and he should keep who can. In these circumstances, pugnacity and vindictiveness are valuable qualities, helping the survival of individuals and families. Pugnacity and vindictiveness, and the reputation of pugnacity and vindictiveness, are a protection against aggression. An aggressor will think

twice before he will incur a retaliation that is certain, and may be worse than his attack. Thus, pugnacity and vindictiveness become valuable qualities, and are fostered and preserved by natural selection. Valuable, however, as they are to the individual, as defences against aggression, yet, as contributing to strife and turbulence within the community, they are anti-social qualities; and no community can thrive unless it keeps them in check. It keeps them in check by stigmatizing and treating as crimes, aggressions by individual members of the community on other members; and such aggressions constitute the first class of private crimes that we are to consider.

The distinction that we draw between pugnacity and vindictiveness, as motives to conduct, depends on the amount of provocation required to evoke them. Vindictiveness is not called into play until some measurable injury is received; while pugnacity prompts to aggression on a minimum of provocation, that may not be appreciable except to the pugnacious person. Indeed, there is no reason to doubt that there are persons so pugnacious that, like the hamster, they will fight for the

mere pleasure of fighting, and without any provocation at all. In any case, we must recognize that life is a struggle; that as every plant, and every blade of grass in a meadow, competes with every neighbouring plant and blade for nourishment, and light, and air; so every individual in a community competes with his neighbours for a livelihood; and competition is of the nature of strife, and readily leads to further strife. The successful competitor outstrips his rival, and leaves that rival sore, and apt to seek retaliation in some form or other. But mere outstripping is, perhaps, rare. In attaining success, in whatever mode of life, it is difficult to avoid doing injury to rivals, not merely negatively, but positively; indeed, the limits between negative and positive injury are hard to fix. A very successful trader benefits numbers of persons whom he employs, from whom he buys and to whom he sells; but he injures his rivals, not only negatively, by diverting to himself custom that, but for him, would go to them; but positively, by attracting their customers from them. When we remember that almost all modes of securing a livelihood are modes of competition, we shall see that occasions of provocation are

constant and endless, and we shall not be surprised that the natural pugnacity and vindictiveness of mankind have frequent occasions of display.

To prevent the ill consequences that must result to the community, from internecine strife among its members, the law makes two provisions. In the first place, it makes private war a criminal offence; and in the second, it provides a substitute for private war, in the shape of litigation. If a citizen is aggrieved by the conduct of another citizen, he must seek redress, not by direct retaliation, but through the medium of the law. In many cases, however, the aggrieved citizen is too exasperated to wait for the slow course of law; or his grievance is one of which the law does not take cognizance, and he pursues his remedy by his own hand. In doing so he commits a criminal offence.

The aim of an aggrieved person, in pursuing his private vengeance, is to injure his enemy, and his crime is various according as he injures his enemy in his person, in his property, in his reputation, or in his feelings.

Actual personal assaults from the motive of vindictiveness become more and more rare

with the increasing morality of modern communities. Official statistics of crime make, as we have found, no distinction of crimes according to motive; but judging from the reports of trials, the great majority of murders by sane persons are committed from motives of gain, or as incidents in crimes of acquisition; the small residue being marital murders. Murder by the sane, from pure vindictiveness, is extremely rare. Manslaughter from this motive is much more frequent; the very provocation evoking a retaliation in hot blood, which is an element in reducing the crime from murder to manslaughter. Crimes of malicious wounding are comparatively frequent, the number in 1909–1910 being 343, against 38 cases of manslaughter, and 16 of murder from all motives. The large number of cases of wounding, in comparison with the graver crimes, indicates the mollification of vindictiveness in these latter days. If we remember the prevalence of duelling a hundred years ago, and the comparative indifference with which the taking of human life was then regarded, we cannot fail to be convinced that the taking of life from vindictive motive has immensely diminished.

Judging from the prominence given to trials for murder, in a large proportion of which insanity is pleaded, we might suppose that insanity conduces more to murder than to any other crime; and it is undoubtedly true that a larger proportion of murderers are found insane on trial, than of persons charged with any other crime; but it is not the case that insanity prompts more often to murder than to other crimes. The number of persons placed on trial for murder in every year, in England, averages about 50; of these, 23 are acquitted; and, of the 30 found guilty, about 13, or nearly half, are found insane as well. But the total number of prisoners tried for all offences, including murder, who are found insane on trial, averages only about 30 per annum, so that of those who are found insane on trial, one half are tried for murder. These figures do make it appear as if insanity conduces at least as much to murder as to any other crime; but this would be a very fallacious conclusion. The fact is, that there is a very much larger number of cases in which insanity could be pleaded at the trial, and could without much difficulty be established; but the prisoner, or his counsel, deliberately

refrains from setting up the plea, for this reason: if the prisoner is found guilty, merely, he escapes with a term of imprisonment, that may be very brief; but if he is found insane, he is committed to a lunatic asylum for an indefinite time, which may extend to the term of his life. It is, therefore, rarely for the interest of the prisoner to plead insanity, except when the penalty is more severe than lifelong imprisonment; and, consequently, the actual plea of insanity is practically limited to trials for murder, and to a small number of other offences by persons of good social position. But to infer that, since it is only in trials for murder that insanity is pleaded, therefore insanity does not conduce to crimes other than murder, would be a very fallacious conclusion. As is well known, there is a mode of procedure by which the sanity of a prisoner may be called in question on his arraignment; and in such cases, he is not tried for the offence for which he is arraigned, until a preliminary trial has found that he is sufficiently sane to plead. Now, in one year (1909–10) the number of prisoners found insane on arraignment was 290, and another 238 were found insane on remand from courts of summary jurisdic-

tion. If we add 157 who were found to be insane while serving sentences of imprisonment, we obtain a total of nearly 700 offenders in one year who are found to be insane either before, at, or after trial. This is only about 3·3 per cent. of convictions, it is true, but the total is a considerable one.

The legitimate conclusion from these figures, is that insanity enters into a larger proportion of murders than of any other particular crime, yet it conduces to other crimes than murder, taken generally, more frequently than to murder, in the proportion of 528 to 13. Insanity is present as an ingredient in 3·3 per cent. of crimes generally, but in 43 per cent. of murders. Nevertheless, the 3·3 per cent. of other crimes amount, in the aggregate, to forty times the number of murders to which insanity contributes.

Of the murders to which insanity conduces, many are murders of the class now under consideration—murders of vindictiveness. Indeed, it is rare, now-a-days, for murders of vindictiveness to be committed from a sane motive. Such murders are occasionally committed by sane persons, but rarely. Manslaughter arising out of pugnacity, a fight in

hot blood with a fatal termination, is not very uncommon; but deliberate murder, or attempt to murder, as a retaliation on injuries received, or because the murderer has a grievance against his victim, is very rare now as a sane crime. It is, however, quite frequent from an insane motive. The great majority of murderous assaults, from a motive of vindictiveness, are committed by sufferers from paranoia, who deludedly believe that they are the victims of a plot, and who unquestionably suffer from sensations that are unpleasant, loathsome, or horrible, and attribute their sufferings to the evil machinations of enemies. Under the circumstances, it is not very surprising that such unfortunates, exasperated, as they usually are, by their unmerited sufferings, should retaliate upon the person to whom they believe that the sufferings are due; and if the revenge of paranoiacs were always so directed, it would be easily intelligible. In fact, however, it is not always, nor even usually, so directed. Conspicuous cases occur from time to time, in which a paranoiac assaults the person whom he believes to be his persecutor. Such a case was that of Mr. Terriss, the actor, who was

stabbed to death by a man named Prince, a paranoiac of old standing, who believed that Mr. Terriss had been persecuting him for years. But more often, the paranoiac attacks some distinguished or conspicuous person from a mixed motive, which is partly that of attacking and punishing some one in retaliation for his sufferings; and partly the desire to draw attention to his case, and so secure an investigation into the plot, and a discovery of its authors. It was on this motive that the life of Queen Victoria was more than once attempted, it was on this motive that Henri IV and many other sovereigns and rulers have been assassinated or attacked. The motive of such murders, and attempted murders, is scarcely that of pure vindictiveness. It seems to be in many cases more of the nature of the general desire to do mischief and to destroy, which prompts a man in a rage to smash the furniture, or to put his fist through the window. It is more a blind rage of destructiveness than a specific desire to kill from vindictive motive. Nevertheless, this is the most appropriate connection in which to consider it.

Whether a vindictive assault is fatal to the

victim; or whether it merely wounds or injures him; or whether it is wholly innocuous, as when the pistol misses its aim; makes a very important difference in the character of the crime from a legal point of view. The prisoner is differently charged, and differently punished; and his crime is entered under a different head in the statistical tables. But from the point of view of motive, which we are now considering, these differences are of no importance at all; indeed, from this point of view, they are not differences. The motive is the same, and the moral guilt is the same, whether the pistol misses fire, or whether the bullet goes wide of the mark, or whether it merely grazes the victim, or whether it wounds but does not kill, or whether it kills him outright. In law, if a man strikes another intending to maim him, but not to kill, and makes the mistake of killing, the crime is as much murder as if he had intended to kill; but in morals, the offence is as grave as the intention or motive, and no graver.

When a person, from an insane vindictive motive, attempts to injure another, the attempt is usually to kill. Insane vindictiveness rarely, in intention, stops short of murder.

Sane retaliation upon injury may be content with a blow, a beating, a horsewhipping; but insane retaliation knows no such moderation. When a vindictive assault by a lunatic stops short of murder, it falls short, not because of any moderation in the mind of the murderer, but because he is unable to carry out his intention to the full. Hence, any vindictive assault that appears, from the circumstances, not to have been murderous in intention, is probably not prompted by an insane motive.

Murders, committed by insane persons from motives of vindictiveness, are often provoked by incidents of a trifling character, that would arouse, in a sane person, either no vindictive feeling at all, or at most, a slight and transient annoyance. A young man shot his sister through the head, and killed her, alleging, as a reason, that she had not passed him the newspaper at breakfast the day before. In other cases, the murderer has, previous to the murder, shown no animosity against his victim; and in yet others, has met his victim for the first time on the occasion of the murder. In either case, the murder is often characterized by circumstances of revolting barbarity, the victim being battered or muti-

lated almost out of the semblance of humanity; moreover, the murderer commonly takes no precautions against the discovery of his crime, or of his connection with it, and often delivers himself up to the police.

In such cases, the motive of the murderer, if he has a motive, is usually insane; but in many of these cases no motive is discoverable, and in some, we can say with confidence that no motive exists. Such crimes are usually the product of epilepsy. They are committed in the state of *épilepsie larvée*, in which the offender is either wholly unconscious at the time of the crime; or is in a dazed state of semi-consciousness, which renders him incapable of appreciating the nature of his act.

In yet other cases, the motive, while vindictive in character, is manifestly insanely vindictive; as in the case of a man who killed his sister's child in revenge for a row that he had had with his brother the day before. The sister had taken no part in the quarrel, nor had the child, which was a mere baby.

The next form of crime that is prompted by the motive of vindictiveness, is injury to the property of the person against whom the vindictiveness is harboured. Malicious

injuries to property constitute only 2·7 per cent. of indictable offences; but they attain in the year to the respectable total of 248. Some of the "malicious injuries to property," so characterized in the official statistics, are undoubtedly due to an insane motive; but malice in law has a very different meaning from the vindictiveness that is now under consideration. The "malicious" injuries of the official statistics are, when perpetrated from an insane motive, rarely prompted by resentment against the owner of the property. The motive is an insane motive, and it would be very difficult, in most cases, to compare it with the sane motives that prompt to acts of the same kind. When a discharged agricultural labourer sets fire to the ricks of his late master, the crime is malicious, in the sense that it is prompted by a motive of resentment, or vindictiveness, against the person whose property is destroyed; but arson committed by the insane is rarely assignable to this motive. Commonly, the crime is committed by feeble-minded creatures, not wilfully, but with reckless negligence. They throw down a burning match, careless of where it falls, and not recognizing the inflammability of hay and

straw; or they seek shelter from the wind under the lee of a stack, and there make a fire, not realizing the danger of the fire spreading to the stack; such incendiaries are, of course, not vindictive. Another class of insane incendiaries are those who suffer from what is sometimes called pyromania—an itch to set things on fire. The existence of such a specialized desire as this, as a condition of disease, seems *a priori* improbable; but cases are recorded that leave little doubt of its existence. In every idiot asylum there are one or two idiots who have a special propensity "to play with fire," a propensity common to all children at some stage of life; and in a few cases, this propensity becomes dominant and lasts into adult life. Only last year, a man gave himself up to the police of Newcastle, because he had an uncontrollable desire to set fire to houses and stacks. He was then 49, and had first set fire to a house at the age of 14. He said that he feels he must set fire to things, and is never satisfied until he has made the attempt. As he walks along the road, he has a peculiar sensation in his head; he hears bells ringing, and voices shouting "Fire! Fire! go and do it." It is clear that, in such cases, the

damage is not done from any vindictive motive; but it is what the law calls malicious damage, and falls to be considered here.

A peculiar and detestable injury that is sometimes perpetrated on property, is that of maiming and mutilating live stock belonging to others, for the purpose of injuring the owners. In some cases of injury of this description, the vindictive motive is clear. It was, a short time ago, and may be now, a common practice in Irish agricultural districts, to injure, by cutting off the tails of his cattle, a person who had incurred the enmity of his neighbours. As far as I know, this peculiar expression of vindictiveness has never spread beyond the limits of Ireland; but, as in the case of arson, injury of this kind is sometimes perpetrated by the insane, from motives that are malicious in law, though not malicious or vindictive in the common sense of the words. Every now and then, cattle or horses are found gashed, ripped, and mutilated, in a very horrible manner, and the crime is found to have been committed by a lunatic, from some undiscoverable motive. It does not appear, ordinarily, that the mutilator has any grudge

against the owner of the injured beasts, and the motive of the act is obscure.

Another injury to property of a peculiarly heinous kind, the motive of which is difficult to trace, is that of putting obstructions on railway lines, with a view of derailing passing trains. In some cases, there is reason to believe that this diabolical crime is committed by present or former employees of the railway, who labour under a sense of grievance, and take their revenge in this manner. In other cases the perpetrators remain undiscovered, and the motive is difficult to conjecture.

Of late years, many cases have occurred, of injury to houses and buildings by the use of explosives; but in few of these cases was the crime one of vindictive injury to property. In the majority of cases, the motive was not private, but political, and was therefore a Public Offence; and in cases in which the motive was private vindictiveness, the object was to destroy, not property, but life. I know of no instance of an explosive being used by an insane person.

The third mode of malicious injury is by defamation of character, or other injury to the feelings. This is in law, usually a matter

for a civil action for damages, not for criminal proceedings; but there are certain cases in which a criminal prosecution is allowed; and when the motive of the act is like that which prompts other modes of malicious or vindictive injury, it seems that it is a proper subject for criminal proceedings, and should be regarded as a criminal offence.

Another mode in which the feelings of others are outraged, without their character being defamed, is by the use towards them, or in their hearing, of obscene and otherwise objectionable language. It is felt to be intolerable that a refined and delicate-minded person should be subjected to hearing filth and obscenity, even if the filthy and obscene language is not intended for his or her ears, but is uttered in public and recklessly of possible hearers. The use of such language constitutes a criminal offence. It is manifest that indecent exposure outrages the feelings in the same way as obscene language does; but there is a difference of motive. Obscene language is used for the purpose of abuse and annoyance; in short, from a malicious motive; while indecent exposure has always a sexual basis.

Most of the Private Offences hitherto considered are such as may be committed from either of two or more motives; and may, therefore, properly be placed in more than one class. Murder, for instance, may be committed from vindictiveness, or for gain, or as a racial crime, or from other motives; but injury to the feelings of others, whether by defamation of character or in other ways, seems as if it could satisfy no motive but that of vindictiveness. No doubt the desire to give pain to one who has offended us, is the most frequent motive for acts of this class; but it is far from being the only motive. The recent general election has afforded instances in which a person has been disparaged out of rivalry, and in order that the disparager might succeed in competition against him. Such instances of disparagement are apt to recoil upon their authors, and to do them more harm than good; but they are not the only, nor the most frequent instances of disparagement from motives other than vindictiveness. Disparagement is very often effected by persons who have no animosity whatever against the person disparaged; it is done merely for the sake

of momentarily enhancing the importance of the speaker in the minds of his hearers. Still, disparagement and defamation do often owe their motive to the same feeling of vindictiveness, and desire to injure the person disliked, that prompts, in other cases, to personal injury, or to damage to property.

Offences due to the motive of vindictiveness form, numerically, but a small proportion of the total number of crimes. Murders and manslaughters are, in these days, but few, and of murders and manslaughters some only are committed from this motive. Crimes of violence, short of homicide, are not very numerous; and of these, again, not all are committed from the motive of animosity. Malicious injuries to property form a numerically small class; and of them the majority are committed from motives other than personal hatred. Libel, slander, and defamation of character are not, except a very few cases of libel, included among criminal offences; and of the civil actions there are no available statistics. If statistics of such actions were available, however, they would afford no information with respect to the motive of the offence. The majority of such

actions are taken against newspapers, and the ultimate motive for the disparagement is, in the great majority of such cases, gain, and not vindictiveness. If all cases of vindictive libel and slander could be collected, and added to the other crimes due to vindictive motive, the total would probably not reach five per cent. of indictable offences. This is but a small proportion, and the smallness of the number is a fair indication of the progress that humanity has made in this country in historic times. As already stated, primitive society lives in a state of war. In primitive societies, the law of vengeance prevails; and this law prescribes an eye for an eye, and a tooth for a tooth. When we go back into the history of our own race, we soon reach a time when vendetta prevailed; when wrong done was punished by wrong doing; when the relations of man with man, of family with family, and of tribe with tribe, were determined very largely by the motive of vengeance. The province of the criminal law is to supersede this system of private warfare by a method more impersonal and more just; to leave it to a third party to mete out the punishment that is due to aggression. Such a method

will not prevail unless it is consistent with the spirit of the people on whom it is imposed; and the fact that acts of vindictive retaliation by private persons have been reduced to such a small and almost insignificant total, is a measure of the degree to which the spirit of legality has overcome the spirit of vindictiveness; and is a measure, moreover, of the height of civilization of the community. This is one, and not the only respect, in which England stands at the head of civilized nations.

So far self-advantageous crimes that owe their origin to vindictiveness or animosity against persons. The next class of self-advantageous crimes consists of those in which the motive is to avoid personal danger; a motive which is, of course, in itself innocent and laudable, but which leads to offence when escape from personal danger is sought by means of injury to others, either in person or in property. The occasions for crimes of this description against the person are rare, but they occasionally present themselves; and when the danger that threatens is terrible and urgent, and the way of escape by injuring another is manifest, the temptation is proportionally strong.

I do not know whether it is a penal offence in an Alpine climber, to secure his own safety by cutting the rope that binds him to his companions, and is a common means of safety for all; but in the code of ethics of Alpine climbing, such an act is the unpardonable sin. It would secure, for the person who was guilty of it, the scorn and abhorrence of every person who knew of the act; and, whether technically a crime or not, it certainly is a moral offence not inferior in turpitude to crime. An offence of the same class is sometimes witnessed in the panic of fire, shipwreck, and other common disasters, when one person secures his own safety by trampling down others, by thrusting them aside, and monopolizing the sole means of escape. A few years ago, the civilized world was horrified by the narrative of certain survivors from a shipwreck, who had killed and eaten one of their companions. In this case, the criminal nature of the act was beyond doubt, and the men were tried and convicted at the Old Bailey; but in most cases of this class, it is difficult to bring the perpetrators within the meshes of the law. The general confusion of the affair, and the death of many of those

present, prevent the collection of evidence. One case of an offence of this class is peculiarly detestable; it is the commission of a crime in such a way as to throw suspicion on an innocent person, or generally, the contrivance on the part of a guilty person, to secure his own safety from punishment for his offence, by diverting the punishment on to the shoulders of an innocent person. Of all offences this is the one that, perhaps, deserves the most reprobation.

Safety and advantage are sometimes sought by inflicting injury, not on the persons, but on the property of others, and so to seek advantage is an offence; but an offence of much wider range of turpitude than that of injuring the person. It may be an act to which blame does not attach, as when a man jumps into a field of standing corn to escape the rush of an angry bull. In this case, however, the damage done to the corn is incidental merely, and is not the primary means of obtaining advantage. If, however, a woman's dress catches fire, and, to put it out, she rolls herself in a valuable rug belonging to her hostess, thereby spoiling the rug; she secures her own advantage by an act of injury to the property

of another, an act that certainly exhibits a minimum of turpitude. To break through a fence, in order to make a short cut over a field, is a more blameable act of the same class; and to wreck a train, in order to pillage the bullion chests that it carries, is an abominable offence. In this last case, however, the indignation we feel is mainly excited by the callous indifference to human life, rather than by the destruction of property; and the same is the case with respect to the acts of the wreckers of a former time, who exhibited false lights on the shore, to lure a ship to destruction, in order that they might appropriate the wreckage. He who breaks up his neighbours' fences to use for firewood, would be indicted for stealing rather than for damage; and it is evident that, in this case, acquisition or misappropriation, rather than damage to property, is the nature of the crime, though it includes both. Dumping of rubbish on a neighbour's land is an offence of this description, and is punishable, and there are other nuisances of the same character.

Advantage, other than the satisfaction of vindictiveness, is scarcely to be gained by injuring the feelings of others; but such injury

is sometimes, as we have seen, an incidental result of the pursuit of self-advantage, and is then punishable. The organ grinder who pursues his vocation in front of my house, annoys me, but he gains no advantage by annoying me; nevertheless he commits an offence, and is punishable. When a man cruelly beats his horse the hurting of the feelings of those who saw the cruelty is an incidental result of the act; it is not the means whereby satisfaction is gained, nor is it the intention of the actor.

It is a curious character of English law—I know not whether it obtains in the law of other countries—that while the infliction of personal injury, the misappropriation of property, and damaging the reputation of others, are all of them penal offences; the deprivation of personal liberty is not recognized as criminal by the law. For false imprisonment, the law allows a civil remedy only. It is true that the putting and keeping a person in actual durance are modes of injury that are extremely rare at the present day; yet in the times during which our Common Law gradually took shape, it was moderately frequent; and it is strange that, while other practices of private war-

fare are specifically provided for, and made criminal; this one should have been omitted, and left among the civil wrongs. The only mode of interference with personal liberty that is a penal offence, is abduction, and this is almost always a crime of the family class, abduction from any other motive being practically obsolete. Stealing of children is a peculiar offence, which scarcely belongs here, though it may be mentioned here. It is usually committed from the motive of gain.

CHAPTER VI

PRIVATE OFFENCES OF THE SELF-ADVANTAGEOUS CLASS

II. *Offences committed for Gain*

THE next class of offences consists of those by which the offender seeks, by the injury of others, to increase his life-worthiness by adding to his property. The preservation of life needs not merely exemption from personal injury by fire and flood, blows and falls, the aggressions of others, and the force of circumstances; but also the provision of food, shelter, warmth, and other necessaries, which, in the complex state of society that now exists, may be summed up as money, and what is purchasable by money.

That peculiar reciprocal relation of things and persons, that we denominate property and ownership, is very deeply rooted in human

nature, and is even shared with man by many of the lower animals. Of these, it is most highly developed in the dog, which actively resists any attempt on the part of a stranger to appropriate property which the dog is accustomed to associate with his master or himself; and the proverbial difficulty of taking butter out of a wolf's throat, is but an exaggerated instance of the tenacity with which every raptorial animal will cling to its prey as its own property. The resentment which bees display at any disturbance of their hive, or any intrusion into it, is another instance of the appreciation of the same relation. It is well known that, under certain circumstances, bees will raid the hives of their neighbours, and that the raids are resented to the utmost, and not seldom lead to the utter depopulation of the raided hive. The instinctive appreciation of property goes much further than this, however; and it is interesting, at a time when doctrinaires are teaching that private property of all kinds, but especially in land, is unjustifiable, and is a robbery of mankind at large, to note that appropriation of territory is a widespread institution among the lower animals. The strict territorial limitation of every pack

of the semi-wild dogs of Constantinople is well authenticated; and, while every dog enjoys peace within the district of its own pack, an intruder from another district is instantly set upon and murdered by the denizens of the invaded district. A widely different type of animal is the robin of our gardens; and every robin, or pair of robins, has its own peculiar territory, and attacks with fury a strange robin that ventures to trespass therein.

What the means are by which persons appropriate things and acquire legitimate property therein; what the signs and tokens are by which it is signified that things are property, we need not now inquire. It is sufficient for our purpose to assume that mankind universally recognizes the institution of property, and that the signs which indicate that a thing is property are well understood. Even the doctrinaire who denies the right of any one to own anything, is not behindhand in prosecuting those who invade his own proprietary rights; and has little difficulty in showing that the thief, when he took the property, must have known that it belonged to some one else.

Property may be acquired from two sources

—from the unappropriated bounty of nature, or by transfer from other people. The first is the ultimate source of all property; but, in the complex and sophisticated organization of civilized societies, but little is directly or wholly acquired in this way. In civilized countries, most things are already appropriated, including the undeveloped resources of the soil; and almost everything that can be called property, is acquired, more or less directly, or in greater or less degree, from other people. The means by which property is acquired from others are two. It may be received as a free gift, or something may be given in exchange for it; and the things that are given in exchange for property are of three kinds—services, property, and the use of property. All these may be included in a comprehensive use and meaning of the term "property." We may take, and in what follows we shall take, property to mean any and all of these things. A man's labour, his skill, his time, are his property, to dispose of as he will, in return for whatever he may agree to take as an equivalent in value. To this most would agree; but it is perhaps a little strain on the ordinary sense of the word

"property" to take it as meaning the use of things. Still, it does not strain the meaning much more to speak of the use of land, vehicles, or instruments, as property, than to speak of the labour of a man as property. Thus understood, we are in a position to formulate the conditions under which an honest transfer of property takes place; and these may be looked at from the point of view of the transferor or of the transferee. Of course, in every transfer of property there must always be these two parties; and in every transfer by exchange, that is, in every transfer that is not a free gift, each party acts in the double capacity of transferor of property to another, and transferee of property from another party. The two capacities are very different. They are reciprocal and complementary, and the transaction has a very different aspect according as it is viewed from the one standpoint or the other. The validity of the transaction, and, what is more important for us in the present connection, the honesty of the transaction, may be vitiated by insanity of one of the parties in either of these capacities, though it is only as transferee or acquirer of property that his soundness of mind is usually

the subject of discussion. Any complete examination of the subject must, however, consider the effect of insanity on the transaction from both points of view.

Looking at the matter, first of all, from the side of the transferor, the conditions of the honest transfer of property from him, are that he who parts with his property, whether by gift, loan, exchange, or sale, must part with it knowingly, of his own free will, with his full consent, and with a clear understanding of the circumstances under which he parts with it. If any of these conditions is in any way infringed, the acquisition of the property by the other party is dishonest.

In the first place, the person who parts with his property, or from whom the property goes, must part with it knowingly, or its acquisition by the other party is dishonest. In other words, to take property of any kind without the knowledge of the owner, is dishonest. Doubtless, most people would assent to this proposition, thus stated; but in doing so, they would probably think of property as material commodities, and would not understand it in the wide sense in which it is here used. To appropriate a material

commodity without the knowledge of the owner, would universally be considered dishonest; but material commodities are but one form of property, as here understood. Another form of property consists of services; and these can scarcely be taken without the knowledge of their owner, so it would appear, though services rendered in the hypnotic state might, without exaggeration, be regarded as stolen. The third form of property, which consists in the use of things, is not infrequently misappropriated, though the misappropriation is not usually considered, as I think it should be considered, to be stealing; and, in fact, this form of dishonesty, though it is felt and known to be dishonesty, is no offence in law, and cannot be punished by legal process. If the concept of property were extended to include the use of things, as well as things themselves, these dishonest practices would be punishable in law, as they ought to be.

In only one instance is the unauthorized use of that which belongs to another person, regarded by the law as dishonest; and this is when the commodity so used is money. I see no reason why, if it is dishonest to use a

person's money without his knowledge, it is not equally dishonest so to use his man-servant or his maidservant, his ox or his ass, or anything that is his. If a chauffeur take his master's motor-car out for his own pleasure or business, or to drive his own friends, without his master's knowledge, this is, in my opinion, and in my definition of property, stealing. He steals the use of his master's car. It is no argument against this view of the act to conclude that, as he returns the car, he steals nothing. It might equally be contended that the office boy who borrows his employer's money out of the till to pay his debts with, intends to return it, and, sometimes, does return it, before the deficiency is discovered. Moreover, there are cases in which the borrowed motor-car meets with an accident; and the chauffeur fails to return it, though he intended to do so. The cases are on all fours; yet the borrowing of the money without the knowledge of its owner is stealing; the borrowing of the car without the knowledge of its owner is no offence at all. A diamond merchant told me that a lady of fashion had asked for a very valuable diamond necklace to be sent to her on approval. It

was so sent, and she was seen wearing it at a reception; and on its return the next day it was found to be powdered with *poudre-de-riz*. This lady stole the use of the necklace as truly as the chauffeur stole the use of his master's car, or the office boy stole the use of his employer's money, or the servant girl stole the use of her mistress's boots and sunshade; and it is not just that the one should be severely punishable, while the others are not punishable at all. A person who takes the use of a thing without the knowledge of its owner, is as guilty of stealing as if he takes the thing itself without the owner's knowledge. He does, in fact, in most cases, take the thing itself; but the crime is discriminated from stealing by the fact, not that he returns the thing, but that he has, when he takes the thing, the intention to return it. It is not discriminated by the fact that he returns it; for, if the chauffeur smashes up his master's car, and so is disabled from returning it; or if the fashionable lady loses the necklace, and so is disabled from returning it; neither is the one guilty of stealing the car nor the other of stealing the necklace. The discrimination is made, in

this as in other crimes, by the intention of the actor at the time of the act. No doubt the reason the taking of the use of money is confused with the taking of money, and regarded as stealing, is because of the difficulty of proving the intention of returning it. But there are many cases in which the intention is the essence of the crime, and yet is difficult to prove. In my opinion, all cases of borrowing, or taking the use of a thing, without the knowledge of the owner, should be regarded as cases of stealing—of stealing the use of the thing;—and should be punished accordingly. The borrowing of money without the knowledge of the owner, should be regarded as stealing, not the money, but the use of the money, and visited with a lighter punishment; the borrowing of things other than money without the knowledge of the owner, should be regarded as stealing the use of those things, and should be visited with punishment. No doubt it is more difficult, in the case of money, to prove the less penal intention; but this is no reason why the defendant should not be allowed to plead the less offence. It is equally difficult, in some cases of manslaughter or wounding, to prove

that the intention was not to murder; but the prisoner is allowed to set up the defence, and prove it if he can.

Insanity does not often lead to the taking of the use of things, as distinguished from taking the things themselves, without the knowledge of their owner. No doubt money is often taken, with the full intention of returning it before the loss shall be discovered, under circumstances that render it so unlikely that it will be in the power of the taker to return it, as to make the intention the height of folly; but it is rare for this folly to amount to actual insanity.

To take a thing without the knowledge of its owner, and without the intention of returning it, is, *prima facie*, stealing; but the presumption may be rebutted, if it can be shown that the taker *bona fide* believed that the thing was his own property. If I take away from my club an umbrella resembling my own, in the mistaken belief that it is my own, the act is not dishonest; and it is equally deprived of the quality of dishonesty whether the mistake is sane or insane. If a person deludedly believes that a thing belongs to him, it is not stealing for him to take that

thing without the knowledge of its owner. In some forms of insanity, the sufferer has enormously exaggerated belief in the extent of his possessions. He believes that everything in the house, or the town, or the country, or the whole world, is his own property; and if, under this belief, he takes that which does not belong to him, without the knowledge of its owner, he is to be excused from penal consequences.

In the second place, in order to render the transfer of property honest, the transfer must be made, not only with the knowledge, but with the free will and full consent of the owner; and this free will may be infringed in various ways.

His property may be taken from him by violence and compulsion, in spite of his efforts and struggles to retain it, as in highway and other robbery.

Or, without actual violence, his will may be coerced by threats of violence, or of other consequences, to part with his property unwillingly, in order to avoid what is to him worse than the loss. Extortion by threats is an offence well known to the law, and punishable. Extortion by threats of violence becomes,

with robbery itself, less and less frequent as time goes on, and order is more securely kept in well-organized communities; but threats of violence are not the only threats by which property is extorted. Blackmail, or extortion by threats to expose, truly or falsely, something discreditable to the victim, is one of the most hideous offences known to the law, and it is one that is far from infrequent.

Such modes of extortion, practised upon persons of average strength of mind, are gross and brutal; but there are subtler modes, exercised upon persons of weaker mind, more timorous, and of less than normal strength of character, that are difficult to bring within the purview of the criminal law, and yet are as much extortion by threats as that of the footpad with uplifted bludgeon. The person threatened by the means referred to, is often in weak bodily as well as mental health; his energies and fortitude of mind are impaired by old age, or exhausting illness; or perhaps he has been from birth a feeble creature. Such persons are susceptible to the influence of threats much milder than those of personal violence or discreditable exposure. It is sufficient to threaten them, openly or covertly,

with displeasure or disapproval, with loss of physical comfort or of moral support, with desertion and loss of services, to induce them to buy off the threatened injury.

Threats of this description, especially when covert, fall within what the law denominates "undue influence," and are not recognized as criminal. The remedy for them is a civil action. There is another means of influencing the will, and so of obtaining property dishonestly, and this also is not, though it should be, regarded as criminal. There are persons of weak will and little force of character, who readily fall under the dominance of stronger minds, and whose will can be overcome without threats; who distrust their own judgment, and rely on the judgment of others, to an extent which renders them no longer free agents. Such persons are called, in Scotch law, "facile," and not only are the dispositions of property made by them, under the domination of stronger minds, in Scotland voidable by the Court; but such facile persons may be placed under guardianship, and restrained from the full power of alienating their property. The weakness of the facile person is not so much that his will can be overborne, so that he can

be compelled by moral *force majeure* to do that from which his judgment recoils, as that his will is captured, and his judgment influenced, so that whatever course is recommended to him by his mentor, appears to him expedient and proper, in spite of its detriment to himself. Facile persons are sometimes fortunate enough to fall under the dominance of those who advise them disinterestedly, and for their own good, but not seldom they are the prey of designing intriguers; and in this way mental disorder, not in the wrongdoer, but in the victim, conduces to the perpetration of dishonesty—dishonesty which is not, however, regarded as a criminal offence. In this instance, again, as in the instance of dishonest borrowing, the criminal law seems to me to shirk its proper function. If it is criminal to deprive a person of his property under threat of personal violence, it is surely criminal in the same sense, though it may be in less degree, to deprive him of his property under threat of any kind, open or covert, of loss of comfort, or support, or approval, or care, or affection, or anything else. No doubt it would be difficult, in many cases, to prove the use of threats; but so is it difficult, in many cases, to prove intention, and

other ingredients in crime; but this does not prevent, in these cases, the act being stigmatized as a crime, and punished as a crime. Such considerations do not, and ought not to enter into the estimation of crime. The law of England, in its distinctions between acts that are criminal and acts that afford ground for civil proceedings only, is illogical, and establishes arbitrary distinctions. In its earlier stage, the law of this country was purely litigious, and regarded every offence merely as ground for an action for damages. Even murder was prosecuted, not by the State, but by the relatives of the victim, whose remedy was the exaction of wergeld—of a pecuniary penalty—from the murderer. No punishment could be inflicted upon him unless he failed to pay the compensation. Even to this day, the power of prosecuting offenders of every grade, even up to murderers with deliberation, rests with the injured person, though in serious cases, the Crown takes it out of his hands. Even to this day, the form of all criminal proceedings in the Common Law is litigious,—is that of an action between parties—even if one party is the Crown; and is not inquisitional, as it is in many countries. Only gradually, and step by

step, were crimes and offences discriminated from other injuries, and made subjects for the penal treatment of their perpetrators, rather than for pecuniary compensation; and the process was never completed. There still remains a large number of injurious acts, discriminated by no principle from criminal offences, that are yet not regarded in law as criminal, and with respect to which the injured party is left to his civil remedy. It is curious that, although the criminal law is constantly being extended, so that, every year, acts that previously were passed unnoticed by the law, are rendered criminal; the extension is always to acts that had not previously any remedy in civil proceedings, never to acts to which such remedy applies. Such things as letting a child go unvaccinated, or a dog unmuzzled; as driving after dark without a light, or riding in a public vehicle while suffering from infectious disease; for which no action for damages could lie, are made penal; but such acts as false imprisonment and breach of contract, which may be extremely dishonest, are left without the stigma of criminality, to be remedied by civil actions for damages. Whether the process of criminalizing wrongful

acts, that are now remediable by civil proceedings, will ever be resumed, is doubtful. English law and English character have little leaning towards logical completeness, but rather prefer hand-to-mouth remedies as occasion arises; but if ever the criminal law is codified, it seems that the opportunity should be taken to make it more complete by including within its ambit the acts to which attention is here drawn.

Not only must the transfer of property, if it is to be honest, be made with the knowledge and free will of the transferor, but it must be made with his full consent; and that he may fully consent, he must have all his faculties about him, and know, in the full sense of knowing, what he is doing. Such knowledge is different from the knowledge of the circumstances of the transaction, next to be considered. A man may know and appreciate the circumstances of a transaction, in the sense that he is not deceived as to the value he is giving, or the value that he is receiving, or the nature of the bargain, or the time, place and circumstances under which it is to come into effect; but yet he may be incapacitated, by obscuration of his mind, from judging of its

expediency as a whole. Thus, if his faculties are obscured by drink, or by insanity otherwise produced, he may be induced to purchase a thing which may be fully worth in the market what he gives for it, but that is useless to him; or to sell a thing that is worth in the market no more than what he gets for it, but that is so endeared to him by association or other consideration, that he would not, with his full consent, part with for twice as much. Of course, to render the transaction dishonest, the want of full consent must be known to the other party, and he must wilfully take advantage of it. Business transactions are not infrequently vitiated by the want of full consent in one of the parties; and when this want is known to the other party, who consciously takes advantage of it, the transaction is dishonest on his part. It is this want of full consent that invalidates the business transactions of the insane. Business transactions by the insane are not *ipso facto*, or necessarily, invalid. They are not invalid from the outset, but they can be invalidated, if it can be shown that the insanity was of such a character that it was calculated to affect, and did in fact affect, the mind of the transactor,

so as to induce him to enter into a transaction that, but for the disorder of his mind, he would not have effected. Any person, therefore, who enters into a business transaction with a lunatic, runs the risk of having the transaction annulled; and this may happen to persons who *bona fide* transact business with a lunatic, not knowing him to be a lunatic; in which case there is nothing dishonest in doing so. But a person who transacts business with a lunatic, or a person of unsound mind, knowing that his mind is unsound, and intending to take advantage of that unsoundness for his own benefit, so as to procure the lunatic to give advantage that he would not have given but for the disorder of his mind, is guilty of a peculiarly mean form of dishonesty, for which he ought to be criminally liable. I can see no material difference of criminality between him who takes advantage of the natural simplicity and ignorance of a man, to swindle him by means of the confidence trick, and him who takes advantage of the want of full consent on the part of a drunken man or a lunatic, to induce him to part with property that, if sober, and sane, he would not part with on the same terms. Yet under our law, the

one is punishable and the other is not. Such transactions may not be frequent, but assuredly there are some, recognized and punishable by law, that are less so; and, if I may judge by the number that come under my own observation, swindles of this description, for swindles they are, are not very rare.

The last element in the honest transfer of property, from the point of view of the transferor, is that he must have a clear understanding of the circumstances under which he parts with it; and the term "circumstances" must receive a wide interpretation. He must be under no singular misapprehension, that is to say, no misapprehension unshared by the transferee, as to the nature or quantity of the property he parts with, or, where there is an exchange, as to the nature or quantity of that which he receives in exchange. He must be under no singular misapprehension as to the person to whom the property is transferred, nor as to the time, place, or circumstances in which the transfer is effected. Any concealment or deception on the part of the transferee, as to any of these elements in the gift or the

bargain, vitiates its honesty, and gives to it a taint of criminality.

Deception or concealment by the transferee of the nature of the property of the transferor, is frequent enough, although, from the nature of the case, it would appear to be difficult. For, the property being in the possession of the transferor, he must be presumed to know more about it. But he does not always know more about it than the transferee. Cases have occurred in which men have bought land, at agricultural prices, knowing that it contained valuable minerals, and concealing this knowledge from the vendor, who was ignorant of it. Cases have occurred of men buying valuable pictures at rubbish prices, knowing from their expert experience, and concealing from the vendor, that the picture is by some celebrated artist. Such transactions are not criminal on the part of the purchaser; they are not even voidable, or susceptible of civil remedy; but they are tainted with dishonesty, and, in a complete code, should be punishable. In other cases there is a remedy for the dishonesty, as when the donee or the buyer has granted to him certain undefined property, and takes property other than was in the mind

of the donor or seller to grant, well knowing that it is other. His grant is of loppings and toppings, and he takes timber also. He is allowed the occasional use of a footpath, and he assumes a right of way. He is allowed sweepings and tailings, and he takes good corn.

Deception or concealment by the transferee, of the quantity of the property transferred, is evidently more difficult, and cases must be rare.

Concealment and deception of the nature of what is given in exchange, are very frequent forms of dishonesty. They constitute the dishonesty of adulteration in all its forms and ramifications, and of all cases of breach of warranty and of implied warranty. It is rare for the thing exchanged or bought to be totally different in nature from what is bargained for; but for it to be of inferior quality, damaged, deteriorated, or mixed with inferior stuff, is one of the most frequent forms of dishonesty.

Other examples of the same fraud are perpetrated by the promoters of wild cat companies, who sell property that, it may be, they do not possess; or, if they do possess it, is of a character utterly different from their

description of it; again a very frequent kind of fraud.

The same fraud is seen again, when a person undertakes to give services having a certain skill, and needing a certain care and attention, and yields services wanting in the degree of skill, care, and attention that is necessary.

Concealment and deception as to the quantity of the thing given or exchanged, constitutes the dishonesty of false weights and measures, false coin, false statements of the amount of work done, or of service rendered. Such concealments and deceptions are criminally punishable.

In principle, the fraud or dishonesty is the same in all these cases, in which there is deception or concealment by one of the parties, as to the nature or quantity of the thing exchanged; but these are very variously regarded by the law. The use of false weights and measures, or false statements of the amount of work done, or of service rendered, is a penal offence, and so is adulteration; but in breach of warranty, which is almost on all fours with adulteration, the remedy is by civil action; and in the first variety, in which the transferee conceals from the transferor the nature of the

property transferred, the defrauded party has not even a civil remedy. It is not easy to understand why the law should make these differences. In the case just cited, it seems that the law supplements its maxim of *caveat emptor* by the maxim *caveat vendor;* but the limits of the application of these maxims are fairly clear. The emptor should make clear the nature and quantity of the property he desires to purchase. If he does not make this clear, or if he is careless in ascertaining the nature or quantity of what he is purchasing, he must stick to his bargain, and the vendor is not to blame. But if, through the fault of the vendor, he is deceived, or wilfully kept in ignorance on either point, then he should not only have his remedy, but the vendor should be criminally punishable. On the other hand, if, as vendor, he is careless in ascertaining the nature or quantity of what he is selling, he must abide by the consequences; but if he has had no opportunity of discovering its true nature, and the buyer, who has had such opportunity, and has availed himself of it, conceals his knowledge from the vendor, then the law should at least allow the transaction to be reopened.

Insanity does not play a large part in fraud, and is not often present either in the fraudulent or the defrauded party. Of course, persons of defective intellect are more easily imposed upon than normal persons; but they are not often defrauded, in the ways here enumerated, because of their feebleness of intellect. When they are sufficiently defective in this way, to render it likely that they will be easily defrauded; and when they are possessed of property of which they could easily be despoiled; they are usually made wards of Court at an early age. But persons who are slightly defective in intelligence, without being sufficiently defective to be made wards of Court, would be likely, so it seems, to be frequent victims of the more ingenious forms of fraud. Experience does not confirm this supposition. The dull and the stupid are usually suspicious beyond the average; recognizing, perhaps, their own limitations, they see attempts at fraud in every proposal, and their conduct in business is usually extremely circumspect. They do not make fortunes, but they are not often victims of fraud, even when it is very ingenious. Those who are facile are, indeed, easily

imposed upon; but the means by which they are imposed on are more often persuasion and undue influence than deception. The persons who are, perhaps, most liable to be victims of fraudulent transactions, are those who are clever, bright, intelligent, but who, in spite of intelligence, perhaps beyond the average, are deficient in capability—in capacity of extracting benefit from circumstances. It is frequent matter for surprise, that the victims of fraud should often be exceptionally clever people. It need not cause surprise if we remember how often intelligence is divorced from capability—how often clever people are deficient in worldly wisdom, confiding, and gullible.

Again, it is widely known that many insane persons are exceptionally ingenious and clever; and, considering the diminution of moral rectitude that often goes with insanity, it might be inferred that the clever insane would be prone to commit frauds. Such a supposition would not be confirmed by experience. Insanity is very often pleaded in trials for crimes of violence; not seldom in stealing by direct conveyance, but almost never as an excuse for fraud; nor does an examination

of recorded cases show that there are many cases of fraud in which insanity might be pleaded, but is not; though in other kinds of crime, such cases often occur.

We are now arrived at the last of the conditions that may vitiate the honesty of a transfer of property. We have seen that the transfer must take place with the knowledge of the transferor, with his free will and full consent; and that he must not be under any misapprehension, unshared by the transferee, as to the nature and quantity of the property transferred. But there is something more. He must clearly apprehend the circumstances in which the transfer takes place—the circumstances surrounding and affecting the transaction.

Foremost among these circumstances is the risk attending the transaction—the risk that he may not receive the *quid pro quo* at all, or that it may be long delayed, or may be less in quantity or in value than he is led to expect. If the risk that he runs is concealed from him, or if he is deceived with respect to it, the honesty of the transaction is vitiated, and an offence against honesty is committed. It is seldom, however, that such offences are

criminal, and it is only very recently that some of the worst, perpetrated by promoters of companies, are become the subjects of civil proceedings to set aside the transaction. It is very seldom that insanity, either on the part of the victim or on that of the perpetrator of such transactions, is a factor in them.

Another circumstance attending the transfer of property, is the personality of the transferee, and as to this, the transferor is sometimes kept in the dark and deceived. The leading case is that of Jacob and Isaac; but this has been paralleled in many cases since. Arthur Orton contrived to pass himself off to Lady Tichborne as her son; some property was transferred to him, and, for a time, great estates were in jeopardy; and many other cases of imposture, some successful and others unsuccessful, are on record. About the dishonesty of such transactions, there has never been a doubt.

Honest imposture, if one may use the term, by the insane, is frequent enough. Many insane persons are deludedly convinced that they are other than they are—that they are the sons or daughters of crowned heads, or

other distinguished persons, and are entitled to great estates, or royal honours. Such imposture by the insane is frequent enough, and never leads to danger of the transfer of property to them; but there is another kind of imposture, the perpetrators of which are usually more or less crazy, which induces people to transfer property to the impostor, not as a right, but by way of gift. This is the imposture of persons who set themselves up as prophets, or as originators of new religions, or of modifications of old religions; and gain to themselves profit by the voluntary, or quasi-voluntary, contributions of their followers and votaries. Such persons are sometimes impostors pure and simple; but in many cases the imposture rests on a basis of mental unsoundness. Such was the case with Joanna Southcott, and probably with John of Leyden.

A different form of imposture is that of the common beggar and begging letter writer, who makes himself out other than he is, and bases his claim to charity on fictitious woes and misfortunes. The dishonesty is frequent enough, but is rarely, if ever, practised by the insane.

CHAPTER VII

FAMILY AND RACIAL CRIMES

It has been shown on a previous page, that conduct falls naturally into three great departments of vital activity, and that conduct pursued for the purpose of preserving the individual, or of continuing the race, may conflict with the interests of society, and thereby become punishable as an offence. We have dealt in the last chapter with those offences that arise out of the conflict between the self-preserving instincts and social needs; and we are now to describe the offences that arise in the domain of racial conduct. Not all of these are directly offences against the community. Some of them, though they exert a damaging effect on the community, do so indirectly; by damaging the family tie, which is the foundation of society. Offences of a third class are injurious to society,

not immediately, but by damaging its future. Checking, hindering, and limiting the production and rearing of offspring, they would, if suffered to become general, keep the number of the community stationary; and if suffered to become universal, they would destroy the community by extirpation, or limit its life to that of the existing generation. The community would come to an end from lack of renewal of its members, as the existing members died out.

In the life-worthiness of a community, that is to say, in those qualities that are of advantage to it, and tend to secure its welfare and prevalence, and its success in competition with other communities, the chastity of women occupies a high place. The foundation of society is the family. Every community of mankind began as a single family. When the young animal, as it grows up, and becomes able to fight the battle of life, roams away from its parents, and seeks a solitary existence, or an existence in company of some mate only, that has similarly left the family circle, social life cannot begin. It is when the young remain with their parents for life, and bring up children who cluster round

the grandparents, that the foundations of society are laid; and by a continuation of the process, the family grows into the tribe; and the tribe into the nation. Ultimately, all social existence rests upon the family; and the main factor to which the family owes its existence, is the exclusive possession by one person, of a person of the opposite sex. Society cannot begin until families are formed; families cannot begin until permanent and exclusive union of the sexes becomes the rule. It is quite true that in certain primitive communities other practices prevail at certain stages; but these exceptions, which are explainable and reconcilable with the principle, do not really invalidate it. Broadly and generally, the family, and therefore the State, are founded on the exclusive possession of individuals of each sex by individuals of the other. Such exclusive possession rests upon the instinct of love, which is ultimately but the desire for exclusive possession; and this is safeguarded by the instinct of jealousy, which ensures antagonism and resistance to any attempt to infringe the exclusiveness of the possession. Recognizing the supreme importance, to the constitution of society, of

exclusive possession, society invests the principle with the safeguard of marriage; and thus the instinct of jealousy and the institution of marriage work for the same end. Jealousy, however, is more extended in its range than marriage. It is not limited to safeguarding the right to exclusive possession which marriage gives. It is often exhibited antecedent to marriage, and when marriage, for some reason or other, is not possible. Marriage is but the seal that society sets on the choice made by love; and this choice is antecedent to and independent of marriage, but not of jealousy. As soon as love selects, jealousy arises to repel third parties from entering the sacred fold, and from baulking that desire for exclusive possession that lies at the root of love. In as far, therefore, as it contributes to the sanctity of the family, and the integrity of the marriage tie, jealousy is an auxiliary to the maintenance of society, and an important social asset. But this advantage has countervailing disadvantages. The tendency of jealousy is to prompt to acts of aggression, and to strife within the community, and in this way is injurious to the maintenance of society, which in another way it promotes.

Such acts of aggression and strife, tending as they do to the disintegration of the community, are offences, and as such are punishable. Thus the first class of Family and Racial Offences is constituted by those which are due to jealousy.

Aggressions prompted by jealousy are exhibited mainly by the male sex. The male sex is by no means the exclusive possessor of the passion of jealousy, but it is in the male that this passion leads to acts of aggression; and such acts being injurious to society, and disintegrative of it, anything which tends to repress or to minimize them is beneficial to society, and is likely to grow, to be fostered, and to be held in high esteem. Nothing could be devised more influential in repressing the aggression of male jealousy, than an inherent disinclination on the part of the female, to allow her affections to wander from their lawful possessor. If the exclusive possession of the female by the male can be secured only by incessant watchfulness and vigilance on the part of the male, it is evident that so large a part of the time, energy, and life of the male must be employed in this way, as to impair seriously his opportunities

for advancing his interests, and those of the community, in other ways. If, however, the female is inherently indisposed to entertain the courtship of any but her lawful spouse, his hands are free for employment in advancing their common welfare, and that of the community at large. Hence the sentiment of chastity in women is a most important social asset; and the consciousness of its importance, makes society treat every infringement of it as an offence. The second class of Family and Racial Offences consists, therefore, of offences against chastity, and against its auxiliary and handmaid, sexual modesty.

After what has been already said, there is no need to insist on the importance, to the integrity of society, of a strict maintenance of the marriage tie. Any infringement of its sanctity is directly injurious to society, strikes at the very foundation on which society is built, and is therefore punished by society. The third class of Family and Racial Offences consists, therefore, of offences against the marriage tie.

Unless the integrity of the family is maintained, society is disintegrated; unless the

natural wastage of the community is replenished by the production and rearing of children, to take the place of those who die, the community will dwindle, and at length expire. Moreover, since community competes with community in the struggle for life, and since, in this struggle, it is, *cæteris paribus*, numbers that prevail, the community is directly interested in securing a copious supply of children to increase its future competent members. To secure the continual and copious renewal of the race, various deeply-rooted instincts have become implanted in man; and any act which interferes with this renewal, or which militates against these instincts, is discountenanced by society, which makes it an offence, and punishes it. The fourth class of Family and Racial Offences consists, therefore, of offences against the Stirp, or against the Racial Principle.

These are the four classes into which Family and Racial Offences naturally fall; but it is clear, upon consideration, that any of the offences that are committed for Self-advantageous motives, may be committed from motives that are, partly or wholly, Family or Racial. The same crime that is

committed to secure a man's personal safety, may be committed to secure the safety of his wife or child. The same assault that is committed from vindictiveness at an injury or insult to oneself, may be committed in retaliation for an insult or injury to one's wife. The same misappropriation that is committed for personal advantage, may be committed for the advantage of wife or children. In this sense, any of the offences enumerated in the last chapter may become Family or Racial Offences, but it is of course unnecessary to enumerate them again here. In practice, when any of these offences is shown to have been committed from Family or Racial motives, its turpitude is diminished; it is regarded with indulgence, and treated with leniency.

The aggression that is prompted by jealousy is a very fertile source of crimes of violence; and crimes of any other description, due to jealousy, are extremely rare. Such crimes may be committed before marriage, in order to secure exclusive possession of the loved one; or after marriage, to maintain and safeguard exclusive possession; or again, after marriage, to avenge an infringement of

the cherished exclusiveness. They are, however, better classified according as the violence is directed against the rival, against the loved one, or against the jealous actor himself or herself.

In order to secure the exclusive possession of the loved one, violence may be directed against the rival. This may be regarded as the normal effect of jealousy, and is the motive of the combat of males for the possession of females, that is so prevalent throughout the animal kingdom; that has prompted, and still prompts, so many duels in primitive societies. It is a remarkable fact, and one that demonstrates the improveability, and raises hopes of the perfectibility, of human nature, that, in the higher social classes of the most developed societies, duelling, and other crimes of violence from the motive of jealousy, have practically ceased. The fact that such crimes are still frequently committed by those in the lower social strata of the very same societies, is an indication that these lower social strata are of inferior morality to those in classes above them. It is often argued that the rich are honest, in as far as they are honest, because, being rich, they are under no temptation to

steal; and the assumption is made that the rich are inferior in morality to the poor. Especially, since it is the well-to-do alone who appear in the divorce court, it is argued that, in marital morality, the higher social classes are inferior to the lower. Such a conclusion ignores the obvious fact that the cost of a divorce prohibits the poor from seeking it. In a matter in which the classes are strictly comparable, such as this, of crimes of violence due to jealousy, it is found that the criminality of the lower classes is greater than that of the higher, out of all proportion to their respective numbers.

Several curious and anomalous practices, which it is difficult to account for, arise out of jealousy. In the first place, though it has been assumed above that jealousy is the complement of love, this is by no means necessarily the case. That love should exist without jealousy is extremely rare, though instances are met with in which a wife, who yet really loves her husband, allows him freedom in amours; but the reverse state of things, in which jealousy is acute, though no love is felt, is by no means infrequent. Marriage gives the right of exclusive possession;

and when this right is infringed, jealousy may be experienced in the total absence of affection, and even when there is actual aversion between husband and wife.

Another anomalous result of jealousy is that the violence that it prompts, may be turned, not only against the rival, the spouse, or the lover that appears to be in process of detachment, but also against the jealous party himself or herself. A distinction must be made here, however. The suicide of the girl whose lover has succumbed to the wiles of an intruder, is not necessarily due to jealousy. It may be from mortification, and that loss of the greatest interest in life which is the common motive of suicide. But there are many cases in which suicide appears to proceed from jealousy alone, though such suicides are usually preceded by an attempt against the life of one, or perhaps the lives of both, the other members of the trio.

For the violence that is prompted by jealousy, though its natural direction would seem to be against the intruder into that exclusive possession which is the aim of love, is not seldom directed against the lover or the spouse; and this, not only where the lover or

the spouse shows signs of yielding to the blandishments of the intruder.

The intrusion of a third party is not the only obstacle to exclusive possession of the loved object. There may be pecuniary difficulties; there may be the opposition of relatives; there may be aversion on the part of the loved one; and in such cases a motive that is scarcely, if at all, distinguishable from jealousy, prompts to violence against one, or other, or both, of the pair. Few assizes go by without a trial, for murder, of some desperate lover, who has killed his sweetheart with the avowed motive that "if he could not have her, nobody else should."

Another of the crimes due to jealousy, though it is not usually attributed to this motive, is the double suicide of a pair of lovers whose union is prevented or interfered with. Such double suicides are not usually ascribed to the motive of jealousy; but if we regard jealousy as that instinct which resents interference with exclusive possession, it seems that they ought to be so regarded. Such suicides are usually those of lovers whose union is forbidden by stern but prudent parents, or by inexorable circumstances;

but sometimes they are committed by married couples who have fallen into poverty, or other misfortune, from which they see no way of escape. Attempt at single suicide, though it remains a crime in law, is scarcely ever treated as a crime; for the misery that prompts it, is recognized to be already great enough, without adding to it by punishment. But attempts at double suicide are rightly put upon a different footing. Each survivor of such an attempt is charged with the murder, or attempted murder, of the other, and must not expect to be treated with the leniency that is awarded to the solitary attempter of suicide; and the reason is clear. The act of suicide requires for its commission the greatest fortitude and determination of which man is capable, and if it is not done in a moment of frenzied impulse, it requires a very great endeavour to screw the courage up to the sticking-point. Every one is open to influence and persuasion by others; and if influence and persuasion are exerted against the project of suicide, they will probably prevail, unless the suicide is the outcome of insanity. When, however, influence and persuasion, and especially example, are exercised in favour of

suicide, they may very probably make just the difference between a half-formed intention, and the full determination which is necessary to the act; and thus may become a true *causa efficiens*. In such a case, the person who incites, or confirms, or strengthens an intention to commit suicide, is rightly considered guilty of murder.

When the motive is to secure exclusive possession, not yet attained, that is, before marriage, aggression is most frequently directed against the lover himself, or more often, herself. When the motive is to maintain exclusive possession, and to prevent or avenge infringement, that is, after marriage, the vengeance of the lover is more apt to fall upon the rival; the loved one being in almost equal danger in either case. The wronged husband is much more rarely a suicide than the disappointed lover; he is more apt to take vengeance on his rival, and less apt to direct his violence against himself. On the other hand, the woman whose lover or husband has deserted her, not seldom commits or attempts suicide, and is more apt to express her despair in this way than by violence to the other parties.

Crimes prompted by the motive of jealousy have very often an ingredient of insanity in them. In certain forms of insanity, especially in paranoia, suspicion is a prominent feature. The lunatic who deludedly believes that he is the subject of a plot, and the object of sinister machinations to poison him, or to injure him in some other way, not seldom attributes the machinations to his wife, and attributes to her the hatching of the plot. When such practices are attributed to the wife, it is natural that unfaithfulness also should be attributed to her, and that this should be assigned as the motive of the plot. Under these circumstances, and having regard to the weakening of self-control that is a part of insanity, it is not to be wondered at that such paranoiacs, in moments of exasperation, should assault, and even murder, their wives. Murder of a husband by a paranoiac wife is, on the other hand, rare; but then it is to be remembered that crimes of violence from any motive, are committed much more rarely by women than by men.

The second class of Family and Racial Offences consists of offences against Chastity

and Modesty. It has been shown that a state of society in which it is assumed, rightly or wrongly, that the exclusive possession of the wife cannot be secured except by physical compulsion, and incessant vigilance on the part of the husband, as is the case in some Oriental nations, is a disadvantageous state, and is likely to go down before one in which the chastity of women may be safely assumed. If the chastity of wives can be maintained only by compulsion, and seclusion, and vigilance, then much labour, much time, much energy, much effort and attention, of the vigorous males of the community, must be expended in keeping the women secluded. It is manifest that if the object can be attained by the instinctive aversion of women to unchastity, all this labour, time, energy, and attention, are set free to be devoted to other objects. Chastity, and its auxiliary, sexual modesty, are, therefore, valuable social assets; and any conduct that tends to violate them, is injurious to society, and is an offence.

Offences of this class include not only direct violations of chastity, such as rape, defilement of young girls, and indecent assault; but such aids to the violation of chastity as

procuration, brothel keeping, and abduction. They include, moreover, indirect incitements to unchastity, such as the production and dissemination of obscene literature and obscene pictures, obscene stage plays, and other spectacles; and they include also indecent exposure of the person.

Marriage formally sanctions and secures that exclusive mutual possession of husband and wife which is the object of love, and the foundation of the family. Anything that impairs the sanctity and binding force of marriage, is *ipso facto* injurious to society, and is an offence.

Marriage gives to each of the parties to it the exclusive possession of the other; and, whether this exclusive possession was originally desired by both or not, it happens, not infrequently, that in course of time, it becomes distasteful to one or both of them. In such cases, the tie may be broken, or an attempt may be made to break it, either by desertion, or by compassing the death of the other party.

The law regards desertion by the husband very differently from desertion by the wife;

the distinction resting on the presumption that the husband is bound to maintain his wife, while the wife has no such obligation towards the husband. A husband who deserts his wife, commits an offence, and is punishable in law. The law will compel him to return to her, or at any rate to maintain her. A wife who deserts her husband, commits no offence, and the husband cannot compel her to return to him. The different treatment accorded by the law to husband and wife appears inequitable. The husband is, and ought to be, bound to maintain his wife; but surely the wife owes a reciprocal duty of good offices towards the husband; and, if the one is enforced by law, it seems that the other also should be enforceable.

In a few cases, the marriage tie becomes so irksome, that one party seeks to end it by the murder of the other. Women rarely commit murder. Murderous propensity is not a feminine foible. But when a woman does commit murder, the crime is almost always of the racial class. It is almost always within the family. It is the murder of husband or child. Murder committed by a woman, for gain, or for non-sexual vindictiveness, is

almost unknown. When, however, murder is committed to escape from the irksomeness of a distasteful marriage, it is more often committed by the woman than by the man; and is usually committed by means of poison. Men, much more often than women, murder their spouses from a motive of jealousy; much less often from the motive of escaping from a distasteful marriage.

Desertion is a grave offence against the institution of marriage; but in itself it is a single offence. It breaks up the family, but it substitutes no spurious tie for that of marriage. Bigamy is a double attack upon marriage. It breaks the existing tie, and it substitutes for the valid and legal tie, an invalid and illegal one. Desertion wrecks one home and breaks up one family; bigamy vitiates two families, and poisons two homes. Being doubly injurious to society, it meets with an exemplary punishment. The motive of bigamy is not often either disinclination towards the legal wife, or inclination towards the spurious one; it is almost always a crime of misappropriation. It is committed from no sexual motive, but for gain. The bigamist looks to escape from the obligation

of providing for his legitimate family, and to appropriate to himself, or to enjoy, the property of the illegitimate spouse.

The remaining offence against the marriage tie is adultery. It is a curious fact that, although all marital and sexual offences, except murder of husband or wife, were originally ecclesiastical offences, and were tried in ecclesiastical courts, yet, when these courts were gradually deprived of their jurisdiction in other than purely ecclesiastical causes, some of their jurisdiction was taken over by the secular courts, and the offences remained punishable; while, with respect to others, the jurisdiction was allowed to lapse, and the temporal courts took no cognizance of them. Unnatural crime, formerly an ecclesiastical offence, is now triable in the king's courts; but adultery and fornication are omitted from the list of criminal offences. Yet, of all acts that tend to loosen the ties of family, and thus impair the fabric of society, none, not even the secret murder of a spouse, is graver, in its effect on the family, than adultery. In the somewhat artificial fabric of the English criminal law, adultery has no place; but in a scheme of

arrangement of crimes, calculated with respect to their detrimental influence on society, adultery would surely be included.

Insanity has a considerable bearing on marital offences. Voluntary desertion by insane spouses is not very frequent, and their involuntary separation, by being placed in institutions, is not to be attributed to them as an offence. Murder of the wife by the husband, and murderous assaults, are by no means infrequent as a result of the delusions of paranoia. Such murders and assaults are, as already stated, usually due to jealousy; but sometimes they are committed from no jealous motive, but merely to put an end to the system of persecution that the offender believes to be in force against him, for it is nearly always the husband who is the criminal in such cases. Bigamy is sometimes, though rarely, attempted by the insane, from forgetfulness that they are already married; or from an obfuscation of mind, which obliterates from their minds the obligation to confine themselves to one wife; or from the delusion that, owing to their divine, royal, or exalted nature, they are exempt from the laws that apply to ordinary humanity. Adultery, on

the other hand, is frequently committed by the insane, especially by those suffering from general paralysis, in which lewdness is a usual symptom, and the sense of obligation and of duty is impaired.

Insanity is concerned in marital offences in another way. The long-continued separation of the married pair that it so often compels, is sometimes an occasion of adultery in the spouse that remains at liberty.

The fourth and last sub-class of Racial Offences consists of those that are injurious to society by limiting the race; that is to say, by limiting the succession of new members to take the place of those who die. It is clear that, if such limitation were widely prevalent, it would result in a stationary or diminishing society in point of number; and if it became universal, the community would come to an end with the existing generation. To secure the continual renewal of the community, various deeply rooted instincts have become developed in social man; instincts which, on the one hand, foster the production and rearing of offspring, and on the other, discountenance practices which

tend to prevent, interfere with, or divert this object.

For these reasons, neglect of children, and, *a fortiori*, cruelty to children, are criminal offences. Neglect of children impairs their chance of attaining adult age, and so reinforcing the numbers of the community. The maternal and paternal instincts, to cherish, nourish, preserve, and foster the offspring, are very powerful motives, and readily overflow, from the children of those who experience these motives, to the children of others. Resentment against those who injure our own children, is readily transferred to those who injure children not our own; and in addition to the resentment that is felt against those who injure others, and thus initiate strife, and therefore weakness, within the community, a further increment of resentment is felt against those who direct their injurious action against children, and thus violate two instincts at one stroke.

The primary duty of the parent is to nourish and cherish the babe through its stage of helplessness and inefficiency, and to fit it to fight its own battle in the world. This duty towards children cannot be performed without

a sacrifice of much labour, much comfort, much self-indulgence; and, when the parental instinct is feeble, the self-regarding instinct of the parent overweighs it, shirks the sacrifice, and the children are neglected. As neglect of children diminishes the efficiency, and it may be, the number, of future citizens, the law regards it as punishable; but the grounds on which the law so regards it would probably be stated, not on the social score here given, but on the ground of the suffering that is inflicted.

If mere lack of attention to their wants is regarded as an offence, active cruelty to children should be so regarded; but it is only of recent years that it has been brought within the purview of the criminal law, and made a penal offence.

A step beyond cruelty to children, is their actual destruction; and here a distinction is made between the murder of children old enough to have a developed consciousness, and to experience fear, and the murder of mere infants. The murder of children above the age of infancy, is grouped together with the murder of adults; but infanticide is differently regarded by opinion everywhere, and in some

communities is differently regarded in law. There have been, and yet are, communities, in which the practice of infanticide is permitted by law, and regarded as an ordinary, and even a praiseworthy proceeding. Even in this country at the present day, there are persons who openly advocate the estimation of infanticide as a venial offence, to be regarded with leniency. Without going to this length, it seems nevertheless indisputable that infanticide is not equal in heinousness to other cases of murder. In comparison with other cases of murder, a minimum of harm is done by it. In no other crime, certainly in no other homicide, is less suffering inflicted on the victim. The victim's mind is not sufficiently developed to enable it to suffer from the contemplation of approaching suffering or death. It is incapable of feeling fear or terror. Nor is its consciousness sufficiently developed to enable it to suffer pain in appreciable degree. Its loss leaves no gap in any family circle, deprives no children of their breadwinner or their mother, no human being of a friend, helper, or companion. The crime diffuses no sense of insecurity. No one feels a whit less safe because the crime has been committed. It

is a racial crime, purely and solely. Its ill effect is not on society as it is, but in striking at the provision of future citizens, to take the place of those who are growing old; and by whose loss in the course of nature, the community must dwindle and die out, unless it is replenished by the birth and upbringing of children. There is, therefore, a good deal to be said for placing infanticide, which is almost always committed by the mother of the victim, in a class distinct from that of ordinary murder; and for giving formal sanction to the practice, which is invariably followed, of inflicting on the mother a mitigated punishment.

In English courts, the death penalty is always announced on mothers found guilty of infanticide; but the death penalty is never inflicted; and it would seem proper that the law should be brought into harmony with practice, by constituting infanticide a crime of less gravity than murder. But to contend, as has recently been contended, that infanticide should be regarded, not as a crime to be punished, but as a misfortune for which the perpetrator is to be pitied and sympathized with, seems to me indefensible. Such a

mode of regarding infanticide would strike a serious blow at the racial principle, and at one of the strongest of the safeguards of chastity. It is quite true that infanticide inflicts, in comparison with other murders, a minimum of harm on existing society; but it is a very serious injury to the principle of the replenishment of society. Moreover, if infanticide were not punishable—the prospect is chimerical, but if it were not—one of the main deterrents to unchastity, in those in whom the inherent instinct of chastity is deficient, would be removed; and the bonds of sexual morality would be seriously relaxed. The punishment of infanticide should not, therefore, be whittled down to a merely nominal penalty. It is a grave offence; and should be so regarded, and so punished.

As already stated, insanity enters as an element into murder in a larger proportion of cases than into any other crime. It is now to be added that of all murders, none is more frequently connected with insanity of the murderer than infanticide. The time of childbirth is a time of great stress and exhaustion to the mother; and under this stress and exhaustion a considerable number

of women become insane. Of all the features of the insanity of childbirth, none is more conspicuous, or more constantly present, than a fury of destructiveness directed against the helpless infant. It is a commonplace of treatment, with those who have to deal with such cases, that the first thing to do is to take the child away from its mother, lest its life should be sacrificed. In such cases, no motive can be assigned for this strange and unnatural crime. It is done irrationally, and in obedience to some erring, but deep-seated instinct, which inspires, not the human mother only, but many of the lower animals at the time of childbirth, and of the *puerperium*. Dogs, rabbits, pigs, and other animals, are frequently guilty of the slaughter of their new-born young.

But the danger to children, from the insanity of their parents, is not confined to the period of infancy. Seldom a month goes by that some unhappy father or mother does not take the life of a child—more often the life of several children—in an access of melancholy madness. The unhappy parent is inspired by no malevolence or vindictiveness towards the children. On the contrary, the parents who

kill their children in such circumstances, are usually exceptionally affectionate and devoted. They love their children with passionate devotion, and the very act of killing is prompted by a distorted and perverted affection. Owing to their malady, they can see nothing before the children but poverty, starvation, and misery; and it is to save them from a fate which seems more dreadful than death, that the parents put an end to the lives of their children.

The considerations that have been adduced above, as reasons for regarding the crime of infanticide of less gravity than that of the homicide of a fully conscious being, apply with additional force to the practice of procuring abortion; a practice which ranks as a crime of great gravity, and is visited with severe punishment. Yet the procuring of abortion, with the consent of the subject, wrongs no one. It prevents the attainment of complete development, by a life that is scarcely begun, but that is yet far from being conscious; and it would strain intolerably the meaning of words, to regard the act as a wrong done to the undeveloped fœtus. The crime is a racial crime. It is a crime because it

deprives the community, not of an actual, but of a potential citizen. It is, on the face of it, less detrimental to the community than the crime of infanticide; and therefore should, presumably, be visited with a punishment less severe. It is, in fact, punished with much greater severity; and the reasons seem to be two. First the sympathy, often misplaced, which is felt for the mother who kills her illegitimate child, and who is always assumed to be an innocent, confiding creature, who has been led away by the calculating arts of a seducer; though she is, in many cases, the more to blame of the two; and in many is of loose character. Second, around the procurer of abortion there clings much of the odium that invests the pandar. He is regarded as a base minister to illicit pleasures; although in fact, a considerable proportion of the women who seek his services are married and chaste.

The prevention of conception is frowned upon by the Church, and *in foro ecclesiæ* it is a sin; but it is not a crime in any legal code known to me. Yet, from the procuring of abortion to the artificial prevention of conception is but a step. It is not improbable

that the practice of preventing conception might have been made criminal, if if were possible to establish it satisfactorily, on such evidence as a court of law could take cognizance of. It is certain that it is discountenanced not only by the Church, but by the opinion of a large number of conscientious persons. The objections to the practice are purely racial. Whatever reprobation it incurs, is owing to no harm or wrong done to individuals, but only to its adverse influence on society, by checking its increase. It is evident, however, that we are here on the extreme limits of criminality, even when criminality is understood in the wide sense that is given to it here, and is not bounded by the narrower limits of the text-books. The restriction of conception, if carried to the limit, would, of course, result in the arrest of the renewal of the population; and would restrict the life of the community to the existing generation. This is true, but it must be remembered that, on the other hand, the removal of all prudential check on the increase of the population, would result in such a rapid and enormous increase of population as would outrun the means of subsistence, and become a

danger to the State. The social organism, like any other, may grow too fast for its strength, and may become disorganized by its own increase of bulk. As a physiological fact, there is no reason, other than the prudential check, why every healthy woman who marries at twenty, should not have twenty children; and as an historical fact, there has never been any nation, people, or language, however little removed from barbarism, or even savagery, in which infanticide, the practice of abortion, or the limitation of conception, has not prevailed extensively. The three practices are complementary to one another, and where any of them is effectually forbidden, one or other of the remaining two will become efficient. Of these three modes, the prevention of conception is the most innocuous, and however we may deprecate its prevalence in excess, it is chimerical to suppose it will ever be abolished, nor is it desirable that it should be.

The injury done to society by the remaining crimes of the Racial class—unnatural offences usually so called, and other unnatural ways of gratifying crude sexual desire—is very remote; but it is manifest that if they were to become

universal, society would die out; and if they were to become general, its existence would be imperilled. No doubt it is to some deep, underlying appreciation of their injurious consequences, if pushed to an extreme, that the reprobation with which they are regarded is partly due; it is more, however, because of the degradation of human nature that they appear to involve. Originally subject to ecclesiastical jurisdiction, and triable in ecclesiastical courts, they have now been taken over by the temporal courts, wherein they are tried, and punished, as a rule, with extreme severity. It is noteworthy that the severe sentences passed upon these offences do not appear to be passed on account of their deterrent effect, for the trials are, for the most part, and very properly, hushed up as much as is compatible with their being technically public; nor are they passed with much view to the reform of the criminal. The reason of their severity is the deepseated revolt in the mind of the judge, at the nature of the crime.

Insanity enters into the perpetration of infanticide, and of the murder of children, more, as we have said, than into the perpetration of any other crime; and it is worthy of

note that into no crime does insanity enter less than into the procurement of abortion, which is apparently so closely allied to infanticide. The relation of the class of unnatural offences to insanity is discussed in my book on Criminal Responsibility, and the discussion need not be repeated here.

CHAPTER VIII

THE CLASSIFICATION OF CRIMES

We are now in a position to set forth a complete scheme of classification of offences, on the plan that has been explained in the previous chapters; one which covers the whole field, which groups together those that are most alike in nature, and separates those that are unlike, as a classification should.

INTERNATIONAL OFFENCES.

Piracy.
Filibustering.
The Slave Trade.
(Anarchism.)

NATIONAL OFFENCES.

PUBLIC.

DIRECT: MAJOR.

Offences against the external defences of the State.
Offences against the Peace.

Offences against the Administration of Justice.
Offences against the Revenue.
Offences against Officers of the State as such.
Abuse of official position by Officers of the State.

DIRECT: MINOR.

Offences against State Monopolies.
Offences against the Benevolent Laws.
Offences against the Protective Laws.
Offences against the Salutary Laws.
Offences against Municipal, Police, and Corporate Regulations.

INDIRECT.

Offences against Religion—Blasphemy.

PRIVATE.

SELF-ADVANTAGEOUS OFFENCES.

Offences for the Gratification of Malice,
Against the person.
Against liberty.
Against property.
Against reputation and feelings.
Offences for Personal Safety,
Against the person.
Against property.

Offences for Gain.
Misappropriation of property.

FAMILY AND RACIAL OFFENCES.

Offences against Individuals.
Offences against the Family.
Offences against the Race.

This being the general outline, the detailed classification is as follows :—

DIRECT PUBLIC OFFENCES : MAJOR.

Offences against the external defences of the State.
Aiding the enemies of the State.
Discovering and revealing official secrets.
Mutiny, and incitement to mutiny.
Offences against the Army and Navy Acts.
Damaging the property of the State.
Offences against the Peace.
Rebellion.
Riot.
Unlawful assembly.
Affray.
Duelling.
Incitement to breach of the Peace.
Offences against the Administration of Justice.
Aiding the escape of a suspected person.

Rescue, and attempting and assisting to rescue an arrested person.
Failure to assist arrest when called on by lawful authority.
Failure to appear as witness or to give evidence.
Perjury.
Destruction of evidence.
Intimidation, bribery, and subornation of witnesses, judges, or jurors.
Contempt of Court.
Inciting to crime.
Contriving and assisting escape of a convict.
Ill-treatment and favouritism of prisoners.
Offences against the Prevention of Crimes Acts.
Acting without authority as an officer of justice.

Offences against the Revenue.
Smuggling.
Evasion of excise.
Evasion of taxation.

Offences against the Officers of State as such.
Treason-felony.
Assaults on members of the government, judges, government officials, policemen,

prison-warders, etc., when on duty, or in their official capacity.

Bribery and unduly influencing Officers of the State.

Damaging the property of Officers of the State as such.

Abuse of official position by Officers of the State.

Extortion.

Accepting bribes.

Acting in public affairs from private motives.

Inequality of dealing.

DIRECT PUBLIC OFFENCES: MINOR.

Offences against the monopolies of the State.

Coining.

Uttering counterfeit coin.

(Forgery of bank-notes.)

Delivering letters for gain.

Stealing postal packets.

Falsifying telegrams and post-marks.

Offences against the Benevolent Laws.

Offences against the Lunacy Law.

Offences against the Poor Law.

Offences against the Intoxicating Liquor Law.

Offences against the Labour Laws—Truck Acts, Factory Acts, etc.

Offences against the Housing of the Working Classes Law.

Offences against the Protective Laws.

Offences against the Public Health Laws.

Offences against the Vaccination Law.

Offences against the Betting and Gaming Law.

Offences against the Merchant Shipping Law.

Offences against the Protection of Machinery Law.

Offence against the protective provisions of the Motor Car and other Law.

Offences against Disease of Animals Acts.

Living on the earnings of Prostitutes.

Offences against the Salutary Laws.

Offences against the Education Law.

Offences against the Game Laws.

Offences against Municipal, Police and Corporate Regulations.

Offences against county and borough by-laws.

Offences against the Police Law.

Offences against railway, dock, conservancy, etc., by-laws.

Offences against stage carriage and cab regulations.
Offences against Tramways Acts.

INDIRECT PUBLIC OFFENCES.

Offences against Religion—Blasphemy.

PRIVATE OFFENCES.

Self-advantageous.

Offences for the Gratification of Malice, or from recklessness.

Against the Person.

Vindictive murder, and attempt to murder.
Vindictive threats to murder
Vindictive manslaughter.
Vindictive wounding.
Vindictive assault.
Vindictive intimidation and molestation.
False accusation.

Against Property.

Malicious arson.
Malicious injury to animals.
Malicious injury to crops, trees and shrubs.
Malicious destruction and removal of fences.

Malicious injury to ships.
Malicious injury to railways.
Setting fire to commons.
Other malicious damage.
Against Reputation and Feelings.
Criminal libel.
Obscene language.
Offences for Personal Safety.
Against the Person.
Murder and other personal injuries.
Imperilling the lives of others.
Intimidation, molestation, and threats.
False accusations.
Against Property.
Injury to property for self-protection.
Offences for Gain.
Direct: by Principals,
In a fiduciary position.
Misappropriation by trustees or Agents.
Embezzlement.
Stealing by servants.
Not in a fiduciary position,
By conveyance
From the person
with violence.
without violence.

From the house
with forcible entry
by day—housebreaking.
by night—burglary.
without forcible entry.
From the church—sacrilege.
From the land
of live stock—(*a*) animals, (*b*) plants.
of dead stock.
attached to the land (fences, etc.).
unattached (vehicles, etc.).
By false pretences, trickery and imposture.
By threats.

Direct: by Accomplices.
Planning, instigating, or aiding misappropriations.
Receiving or aiding in the disposal of misappropriated property.
Being in unlawful possession of misappropriated property.

Indirect.
Forgery and falsification of accounts, or other documents

Murder by an heir, or person interested in the succession.
Destruction and concealment of property to obtain the insurance money.
Feigning sickness or injury to obtain compensation.
Offences in bankruptcy.
Other frauds.

Racial and Family Offences.
Offences inspired by Jealousy.
Murder and violence towards the rival.
Murder and violence towards the loved person.
Attempt at double suicide by agreement.
Offences against Chastity and Modesty.
Rape.
Defilement of young girls.
Indecent assault.
Procuration.
Brothel keeping.
Abduction.
Producing, keeping, and selling obscene literature, etc.
Exhibiting obscene spectacles.

Indecent exposure.
Offences against the Marriage tie.
Murder of husband or wife to escape the marriage tie.
Desertion.
Bigamy.
Offences against the Race.
Abandoning children.
Neglecting children.
Cruelty to children.
Infanticide.
Concealment of birth.
Procuring abortion.
Unnatural offences.
Incest.

CHAPTER IX

CRIME AND INSANITY

So far, we have discussed the nature and kinds of Crime and Insanity, and have shown what kinds of insanity conduce to crime, and what kinds of crime are apt to be contributed to by insanity. Our task is not complete, however, until we have drawn the connection a little closer, and shown how it is that insanity contributes to crime.

We have found that crime is, in the immense majority of cases, a preponderance of self-regarding desire and action over social desire and action. It is the pursuit of self-gratification at the expense of the welfare of society, in one of the ways already specified. The majority of men are not criminal, not because they are destitute of desire for their own gratification, but because this desire, in cases in which it could be gratified by injury to others, and so

be criminal, is counteracted by other desires—the social instincts which make a man reluctant to injure either the community of which he is a member, or his fellow members; and other self-regarding desires, such as that of escaping punishment, that of preserving the respect of his fellows, and so forth. We may put aside for the moment, the influence of the fear of punishment in keeping men from crime, for he who is deterred from crime by this influence alone, is a potential criminal. If he thought he could commit crime with impunity, he would do so. His character is that of the criminal, except that he is more cautious. The true distinction between the criminal nature or character, and that which is moral and law-abiding, is that, in one, self-indulgence overpowers the social instincts, and in the other the social instincts overpower self-indulgence.

Let us pause here to ask what precisely is meant by the social instincts. In one sense, and that a legitimate sense, desire to preserve the respect of our fellows is a social instinct; but it is clear that he who refrains from crime for fear of losing the respect of his fellows, is but one degree removed from him who refrains for fear of going to prison. Both

are restrained by desire to escape the ill consequences of crime; and both would be criminal if they were assured that their crime would remain undiscovered. The social instinct that has been mentioned above, is the inherent repugnance to injure others in order to gain advantage to ourselves. It is the honesty that is preserved by an inherent repugnance to act dishonestly; the desire to avoid injuring others in mind, body or estate; the sympathy that is pained by injury done to others; the instinctive aversion to any act that is injurious to the social fabric. This is what is meant by the "social instinct," and he in whom it is well developed, is incapable of crime, because he is withheld from it by internal reluctance, not by external coercion. In the conflict of motives that so frequently arises in our experience; in the search for self-gratification which is the underlying motive of the greater part of our conduct; it often happens that particular gratifications are only to be obtained by injury to society, to our fellows, or to social institutions. In these circumstances, if we give way to self-gratification, and take a criminal course, it is either because our social instinct, in the sense defined above, is defec-

tive, or it is because we do not realize that the action we take is immoral. The first case is that of the ordinary criminal; the second stands on a different footing.

From what has been said, it appears that the two opposing sets of instincts—the self-regarding and the social, are present in different proportions in different people. The object of the penal laws is to reinforce the social instincts by adding to them a self-regarding motive for abstention from crime; and Nature herself provides another reinforcement, in the reluctance that all men have to incur the disapproval of their fellows. In the great majority of cases, the concurrence of these three motives is sufficient safeguard against indulgence in criminal conduct; but this preponderance of anti-criminal motives may be upset in various ways. It will be reversed if the pro-criminal motive—the desire for self-gratification and self-indulgence—is increased to the point at which it overpowers opposing motives of normal strength; and it will be reversed if the restraining motives are so weak, as to give way before a self-indulgent desire of ordinary and normal strength.

It is very difficult, in any particular case, to

determine whether criminal conduct is due to the first of these states of character, or to the second, or to a combination of the two; and the difficulty is increased by the variety of the degrees of gratification that are afforded to different persons by the same experience. There are persons to whom sensual indulgence in food, in drink, in luxurious surroundings, in sexual pleasures, appeal with irresistible force; and there are others, who live, of choice, lives of asceticism, in which such pleasures are ignored. Is this because they yield little or no pleasure, or is it because the considerable pleasure that they yield, is as nothing compared with the paramount call of duty? Undoubtedly, the one explanation is true in some cases, the other in others. So, in the opposite state of things, when duty is overpowered by self-indulgence, is it because the sense of duty is weak, or because the allurement of self-indulgence is strong? Again, the explanation is different in different cases.

It is to be remembered that, though the sense of duty is innate, yet it is, in most people, developed and increased by training and association, especially in early life; and that, although the sense of duty, and the desire to

act in accordance with duty, are innate, the acts which duty dictates, and which duty forbids, are known, not so much by innate preferences and aversions, as by instruction and observation. Hence it may happen that a person, whose notions of duty have been acquired in a distorted form, may do, from a sense of duty, acts that, though not criminal in the sense of being illegal, are yet highly injurious to society, or to its members. No one questions the deep conscientiousness of Innocent III, or of Torquemada; but few would now question that the massacre of the Albigenses and the horrors of the Inquisition were injurious, not only to their unhappy victims, but to the communities to which they belonged. These acts, though anti-social, were permitted, and even enjoined, by such law as then existed, and were not criminal in the technical sense; but it is easy to see that a person may be brought up in such doctrines, or may consciously arrive at such opinions, as dictate to him action that is criminal, in the sense that it is a breach of existing law, but that is imperatively demanded by his sense of duty. Many Public Offences originate in this way. The law enjoins certain acts, such for instance

is attendance at a particular form of Divine Service, which the citizen cannot do without violating his conscience; and in keeping his conscience intact, he violates the law. Or the law forbids an act, such as attending a certain meeting, which his conscience imperatively demands from him. In following the dictates of his conscience, he offends against the law. Or for the better government of the nation, he seeks to upset the existing authorities and institutions, and to supersede them by others. Again his sense of duty impels him to commit a Public Offence.

We find, therefore, that crimes may be due, not only to excess of self-regarding desire over duty, but to excess, or at any rate to a high development, of the sense of duty.

Thus we find in human character several sources of crime. It may be due to an excessive strength of some self-regarding desire. It may be due to defect of the sense of duty; or it may be due to a sense of duty in conflict with the action which the law prescribes.

No doubt there are many people in whom self-regarding desires, that is to say, desire for action on account of the gratification derived from it, is excessive. The mere fact that such

desires prevail, in spite of the restraint of duty, does not necessarily indicate that they are excessively strong. It may mean merely that the sense of duty is weak. But there are cases which prove beyond a doubt that certain desires are excessive. They may be desires to do things which bring no advantage to the actor, beyond that derived from the mere doing of the act. And in this way insanity contributes to the commission of crime; for the character of certain mental disorders is in this very exaggeration of desire. Some persons are assailed by most urgent desires, which they abominate, repel, and resist, to do things which are criminal, and which they abhor. They are constantly urged, by some internal irrational compulsion, to steal, to injure themselves or other people, to set things on fire, and to do other criminal acts. In a case at present under my care, a footman of most mild and gentle disposition, finds himself under a constant inclination to poison the soup; to put powdered glass in the viands; to stab his master or his master's guests at meals; to throw the children out of the window; and so forth. In other cases, the mania is for stealing; but the motive of the act is not so

much gain, as the motive of the collector; for persons thus affected usually limit their thefts to one class of things. One will steal shoes, another spoons, another fans; and the value of the articles stolen has no relation to the needs of the thief, who will, in many cases, steal a thing that is of no value to him at all. The gratification is in the doing of the act, and when it is done, the thing stolen is not valued or desired. It is often given away, or put away and never inspected again.

The desire is sometimes morbid, not only in this sense, but in the sense that it would bring no gratification to a normal or average human being, but rather be disgusting and abhorrent to him. Such are the impulsions under which some people suffer, to commit suicide, and those under which other people suffer, to gratify lust in some unnatural way. In these last cases, insanity contributes to crime, not by increasing desire, but by diverting it into a criminal direction. There is no evidence that desires of this unnatural character are any more urgent than those of the same class that are normal, but the very nature of the act is itself criminal.

Crime may also be due, and no doubt is

due, in the vast majority of cases, to defect of the sense of duty; and in this respect insanity contributes materially and naturally to crime. For insanity is a deteriorating and denuding malady. Its action, when it is regular, is to impair and remove, first and most, the qualities that have been latest acquired by both the individual and the race, and to leave outstanding, in exaggerated prominence, those of earlier acquirement. Thus we find, in the matter of memory, people will lose first the faculty of remembering recent events, while their memory of events long past will be so exaggerated that they think them still in process of happening; and the grandfather will call his grandchildren by the names of his schoolfellows, and imagine himself back at school. Now, as so often reiterated, the social instincts are of comparatively late origin in the history of the race, and, in the denuding process of insanity, the sense of duty, and of obligation to one's fellows, is lost early. For this reason it is that offences committed by the insane, even when committed in the sane part of their conduct, should always be regarded with leniency, and should not be punished with

the same severity as corresponding offences committed by the sane.

But in the sane also, the sense of duty is often deficient; and the deficiency is not always, is perhaps seldom, wholly ascribable to fault in the defective person. The sense of duty is partly innate, partly acquired through precept, exhortation and example; and a person is scarcely to be blamed for deficiency in the mental constitution with which he is born, any more than he is to be blamed for deficiency in his natal bodily constitution—for being born with a cleft palate, or a hare-lip. Nor is he blamable if he has grown up under such conditions that no ideal of duty has been set before him. It is to some dim perception that persons, whose native constitution or education has been thus defective, are not responsible, in the sense of not having themselves produced these conditions, that they are considered not responsible, in the sense of not being righteously punishable for acts that they do in consequence of their birth or upbringing. Irresponsible in the one sense thay are; but irresponsible in the other sense they are not; and the confusion between the two meanings

of the term responsible is itself responsible, in a third sense, for much loose thinking and false doctrine.

It might be contended with equal reason that, since the penal law is an artificial and external reinforcement of the self-controlling motive of the sense of duty, therefore, whenever the sense of duty is unusually defective, the supplementary or complementary motive, of fear of punishment, should be correspondingly increased, by increasing the severity of the punishment. This would be a logical answer to the contention that criminals should not be punished because they have been born without a proper sense of duty, or have grown up without being educated in duty. But in these matters, logic does not count, or ought not to count. The two positions are much like the classical instances of pairs of dilemmas, each of which leads to an irrefragable conclusion from incontestable premisses, and each is directly contradictory of the other. It is a matter to be decided, not by logic, but by experience. Whether crime should be punished with leniency or with severity, must be decided by considering what the origin and purpose of punish-

ment are; and, without inquiring again into the origin of punishment, which I have done elsewhere, it must be acknowledged that the purpose of punishment is not single, but multiple. The main purposes, however, must always be two—to retaliate on those who inflict pain, by causing them to suffer; and to protect society against those who act in such a way as to injure it, directly or potentially. It cannot be contended that crime is punished solely for the protection of society, for some acts are made crimes, and are punished, that do not damage society in the least. Such are unnatural offences. They are punished, not because they damage society, or tend to damage society, but because they produce unpleasant feelings in the minds of those who hear of them. They outrage racial sentiment. They raise disgust and indignation; and the natural effect of disgust and indignation is to wreak them in pain upon the object that causes them. Nor are crimes punished solely for their moral turpitude, which is another name for the disgust and indignation that they arouse in us. Were they so punished, many offences that are punished, and, we feel, justly punished,

might be committed with impunity. There is no such crimeless and law-abiding body of men in existence as the Quakers. The Quakers who went to prison rather than pay church rates, or rather than take an oath in a court of justice, were sent to prison from no disgust or indignation at their offences, but solely because they refused to do that which society, for its own welfare and protection, called upon them to do.

Crime may also, as we have seen, arise from excess, or from a high development of the sense of duty, as in the case of the Quakers just referred to. It seems paradoxical, in view of what has been said above, but it is a fact beyond all question, that crime is often committed by the insane from a morbid excess of conscientiousness. One frequent effect of insanity, is so to impair and reduce the self-esteem of the sufferer, that he deems himself unfit to live, and takes his life accordingly; or it is so perverted and exaggerated that he considers that his friends, his country, the human race at large, are suffering, or will suffer, stupendous calamities on account of his wickedness; and that the only salvation for them, is for him to take his own life. He

does so, and he does so from a morbid development of the sense of duty

There is one other mental defect belonging to insanity that frequently produces crime, and it is the only mental defect which the law acknowledges as sufficient to exonerate a criminal from the full punishment that the crime ordinarily meets with. This is impairment of intelligence. The intelligence of the criminal may be so impaired that he may not know, in the full sense of knowing, what he is doing. The law admits that he is exonerated if he does not know the nature and quality of the act, and that it is wrong. Without considering the meaning of this dictum, which I have examined elsewhere, I may here say that a criminal should be wholly or partly exonerated from a crime if he misapprehends either (1) The nature of his act; or (2) The circumstances in which it is done; or (3) Its natural consequences.

Unless he is quite unconscious, and criminal offences are sometimes committed by people who are at the time mere automata, without any consciousness at all, it is difficult to suppose that a criminal ever misapprehends the nature of his act. If it is appropriating

goods, he must know that he is taking them; if he is assaulting another, he must know that he is committing an assault; and so forth. Of the quality of the act,—that it is, in the first case, theft; and in the second, murder; he may be wholly ignorant. He may take the thing, believing that it belongs to him; he may kill the man, believing him to be on the point of forestalling the intention. These are instances of the second defect in knowledge,—misapprehension of the circumstances in which the act is done. This misapprehension is a very frequent contributory to crime. It leads to what appear to be thefts, from mistake in ownership. It leads to breach of all kinds of legislation, from ignorance of its existence, or of its provisions. It leads to crimes of vindictiveness, from mistakes as to the acts of others, or as to the motives of those acts. Offences are not infrequently committed by retaliation on the wrong person for injuries suffered, or in retaliation on an intention to injure, which did not in fact exist. It is to be observed that such mistakes are not necessarily due to insanity. They may be made by the sane; and vindictive offences committed by the sane, even where

the circumstances are misapprehended, are still punished. Ought they then to be punished when committed by the insane? This is a matter for separate decision in each particular case. It seems to me arguable whether a lunatic who commits a murder, presuming on the fact that he is a lunatic, and therefore will not be punished, ought not to be hanged.

Lastly, crime may arise out of insanity when the natural consequences of the act are, by reason of insanity, unforeseen or misapprehended. Such defective appreciation of consequences is no excuse for the sane, for every sane person is presumed in law to intend, and therefore to foresee, the natural consequence of his acts. But this presumption may be rebutted in the case of the insane. The idiot who cut off a sleeping man's head, to enjoy his surprise when he should wake, clearly did not apprehend the natural consequences of his act; and persons who are deficient in mind, are deficient also in foresight, which is one of the chief uses of mind. They would light a fire beside a corn-rick, without foreseeing the natural consequence, that the rick would catch fire. They would

fire a gun for the pleasure of hearing the noise, without foreseeing the natural consequence, that the person at whom the gun happened to be pointed, would be injured or killed. They would put poison in food, for the purpose of causing discomfort, without foreseeing that the natural consequence is to cause death. Many crimes are committed by persons of defective mind, from want of foresight of the natural consequences of their acts; and such want of foresight implies want of intention; and, in cases in which intention is part of the crime, such acts are not criminal.

The responsibility of the insane for the offences they commit may be summarized in the following quotation from my book on Criminal Responsibility :—

1. Some persons are so deeply and completely insane or idiotic, that we are not warranted in punishing them for any offence they may commit.

2. The majority of insane persons are sane in a considerable proportion of their conduct; and when, in this part of their conduct, they commit offences, they are rightly punishable.

It is a question for the jury whether the insanity did or did not influence the conduct.

3. Since the limits, between the sane and the insane areas of the conduct of insane persons, are ill-defined, no insane person should be punished with the same severity that would be awarded to a sane person for the same offence.

4. The foregoing propositions apply to persons who are insane in the ordinary sense, that is to say, who, whether deluded or no, exhibit intellectual defect or disorder. All such persons will be as completely or partially exonerated from punishment as justice requires, if the test is satisfied that they did not know the nature and quality of the act, and that it was wrong; *provided* that this knowledge includes knowledge and appreciation of the circumstances in which the act was done; and *provided*, also, it is held in mind that knowledge is a matter of degree, and that a person may know his act is wrong, without knowing how wrong it is.

5. The test of ignorance will not suffice in cases of moral insanity and moral imbecility. It can scarcely be contended that morally insane persons should be completely exon-

erated from punishment for offences done to satisfy morbid desire. It does not, however, appear just to punish them with full severity. Although they are not exonerable under the test of insanity at present in force, yet, when the facts are brought before the judge, the punishment is usually in practice mitigated. It seems desirable that the state of moral insanity should be recognized as a morbid state, and the practice made universal in such cases.

6. The test of ignorance will not suffice to exonerate moral imbeciles from the penal consequences of their offences. Yet it is repugnant to the sense of justice to punish persons who, it is clear, are morbidly constituted, and on whom punishment has no deterrent effect. It seems desirable that the state of moral imbecility should be recognized as a morbid state; and that, when it is proved to exist, the subject of it should not be convicted as an ordinary criminal, but should be relegated to special treatment, directed to the removal of his disability.

The moral insanity and moral imbecility here spoken of are peculiar mental affections, whose existence is proved beyond doubt.

Moral imbecility is a congenital inability to distinguish between right and wrong, and to be influenced by punishment. It does not often endure to adult life, but is frequent in children. Such children steal and lie, are in some cases cruel, and even murderous; in others precociously lustful; and in all are undeterred from their evil practices by the fear of punishment, even when it has been, in the past, prompt and severe; and when the future prospect of it is that it will be severe, prompt, and certain. The morally insane are those who, after a life of uprightness and rectitude, become, in middle age or later, perverted in conduct, and take to criminal and immoral practices, which, as in moral imbecility, punishment and exposure are ineffectual to arrest.

It will have been seen from what has been said in the foregoing pages, that in several respects the criminal law is open to improvement. Distinct from the law itself is the mode of its enforcement as practised in Courts of Justice. It is held by some that the procedure in Courts of Justice is of such a character as to bear hardly on the insane

offender, and to give him little chance of having his defects recognized and his insanity allowed for. This is not my experience. I have found, in the many trials that I have attended, and the still more numerous trials that I have reported, the utmost solicitude on the part of the Court to bring the true facts to light, and to give the prisoner the benefit of any considerations that tend to show mental deficiency or mental derangement in him. After removal to prison, also, a watchful eye is kept on prisoners, and signs of mental defect or derangement are speedily detected, and, when discovered, are made the ground for a modification of his treatment.

NOTE ON BOOKS

THERE is an immense literature on Crime, and an immense literature on Insanity; but not much has been written on the relation between crime and insanity, and what has been written on this subject is, for the most part, scattered through blue-books and periodicals. The works of Lombroso and his school treat of the Criminal rather than of Crime; those of Bentham and Beccaria treat, not of crime, but of punishment. There is much interesting allusion to the relation of Insanity to Crime in the works of Dr. Maudsley, but the subject is treated by him rather incidentally than systematically.

Two works which treat systematically of the relation of crime to mental disorder are a book by Dr. Oppenheimer on *Criminal Responsibility*, and one by myself with the same title. Dr. Oppenheimer reviews and compares the laws of many countries on the subject, and mine investigates the conditions of criminality. Sir FitzJames Stephen's *History of the Criminal Law* treats of the subject from the legal point of view; and a large collection of criminal trials, in which insanity has been pleaded, will be found in back numbers of the *Journal of Mental Science*, in which I have reported them for many years. An excellent article on "Criminal Responsibility," by Dr. Orange, formerly Superintendent of Broadmoor, is contained in Tuke's *Dictionary of Psychological Medicine*.

Statistics will be found in the annual reports of the Prison Commission. *The Insane and the Law*, by Mr. Pitt-Lewis and Dr. Percy Smith, contains an excellent discussion of the subject.